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LOCAL CESS ON WATER-RATE FOR LOCAL PURPOSES.

A Bill is still under the consideration of our local Legislature to amend so much of Madras Local Funds Act IV of 1871, as affects the levy of a cess calculated on the water-rate payable on lands under cultivation. This Act, like its sister enactment the Madras Towns' Improvement Act, III of 1871, was the offspring of the busy train of Sir Alexander Aburthnot, when in his place in Council he took such a large share in the administration of this Presidency. The Local Funds Act was passed to raise funds for the construction and maintenance of roads, for the diffusion of education, and for various objects of public utility, calculated to promote the health, the comfort, or the convenience of the inhabitants of places not brought within the limits of any Municipality. In short, while Act III of 1871 dealt with the Municipal administration of towns and other advanced places, Act IV of 1871 was designed for the economic and sanitary conservancy of villages still in a state of rural primitiveness. The Act thus constituted Local Fund Boards with jurisdiction over a prescribed circle of villages, and empowered them to raise a rate or cess not exceeding one anna in the rupee on the annual rent value of all occupied land on whatever tenure held, a tax on houses ranging from 4 annas to 5 rupees per annum, and tolls on carriages, carts and animals passing along roads within the circle at rates ranging from one anna on a bullock or an ass to one rupee on an elephant. It will be observed that an element in the calculation of a one anna cess on lands under cultivation was their annual rent value. This of necessity involved a rule for estimating the rent value. Section 38 of the Local Funds Act accordingly prescribed the rule required, and laid down three modes of calculating the rent value: *firstly*, in the case of lands held direct from Government under a ryotwary settlement, the assessment payable to Government for the land, together with any water-rate which might be payable for its irrigation, was to be taken as the annual rent value of such lands; *secondly*, in the case of inam lands, whether wholly or partially free from assessment, the full assessment which such lands would bear if they were not inam, together with any water-rate which might be payable for their irrigation, was to be taken as the annual rent value, it being provided that such full assessment and water-rate, if not already fixed and known, was to be determined by the Collector of the District under the general orders of the Board of Revenue;

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and *thirdly*, in the case of lands held on any other tenure, which of course included all zemindary estates, the annual rent payable by the tenant to his landlord was to be taken as the annual rent value of the lands in the hands of tenants; and in the case of land held by the owner himself, or by a person under a favourable tenure from him, the rent ordinarily payable to the landlord for similar lands leased out by him in the neighbourhood was to be taken as the annual rent value of lands thus occupied. It will be seen that in this third sub-rule, all allusion to a water-rate was omitted. It does not appear clear to us whether this element of calculation was purposely omitted by the framer of the Bill, or whether it was simply one of those accidental slips which sometimes take place in the preparation of large and comprehensive schemes; but the effect is clear, viz., that zemindary lands escaped, in a certain degree, a burden that was cast on ryotwary and inam lands. The point appears to have been first raised about three years ago in the Godavery district, where the Sub-Collector had collected local cess calculated on the rate payable by the Zemindar ryots for water supplied from Government sources. The Government were of opinion that the land-cess was not legally chargeable on water-rate paid direct to them by ryots in zemindaries; and as these zemindary ryots had awoke to the fact that they were not liable to the demand and had actually applied for its refund, it became a question for serious consideration whether a source of income which to some extent contributed to the funds requisite for local improvement was to be abandoned, or whether the law was to be amended so as to remedy the legal omission that had been made. As pointed out above, land-cess was leviable by Act IV of 1871 on all land assessment and all water-rate, with the exception unfortunately of water-rate payable direct to Government by ryots in zemindary villages. The exception was the consequence of the wording of that part of the Act relating to land-cess in zemindary lands. It was calculated that the amount of water-rate paid direct to Government by ryots in permanently settled estates was about Rupees 80,629 a year, of which very nearly the whole was paid in the Godavery District alone. The tax on this amount of water-rate might in itself not have been much, but the cess omitted might increase, and in principle it was bad to exempt a small section of the people, for no intelligible reason, from a burden that fell on all others similarly situated. The Government therefore very justly resolved that the subject should be considered in the Legislative Department, in view to an amendment of the Act; and that Department drew up a short Draft Bill embodying the required amendment, which was passed on to the Council for making laws and regulations, the Hon'ble Sir W. Robinson, K.C.S.I., being requested to take charge of it.

In moving for leave to introduce a Bill to amend the Local Funds Act, Sir W. Robinson explained the reasons that existed for the amendment, and he also called attention to the further section drafted in the Bill, providing for exceptional circumstances, such as where zemindary ryots paid their water-rate direct to Government, instead of through the Zemindar. The additional section provided for levying the one anna in the rupee cess on the water-rate direct also, instead of through the landlord. The matter being a simple one, and to avoid delay, Sir W. Robinson moved for the suspension of the standing orders, and asked for leave to introduce the Bill at once. Leave having been granted accordingly, the Bill was referred for the consideration of a Select Committee consisting of the mover, the Hon'ble Mr. Cunningham, the Hon'ble V. Ramiengar, and the Hon'ble G.

N. Gajapathi Rao. When the Legislative Council met again, which they did on the 17th June 1875, on the Neilgherry Hills, the lamented death of the late Lord Hobart, which plunged all Madras into such deep and sincere sorrow, had taken place, and Sir W. Robinson had assumed the reins of Government. Accordingly we find that the learned Advocate-General presented the report of the Select Committee, the hon'ble mover being now in the place of the President of the Council. After going over the grounds which had led to the introduction of the Bill, the Hon'ble Mr. Cunningham drew attention to the alterations which had been effected by the Select Committee. He explained that Clause 3, as originally drawn, had been so worded as to leave it open to doubt whether it applied to cases in which the water-rate was being paid to Government by the landlord. Such an ambiguity would clearly have worked unfairly: if the landlord himself paid the water-rate and charged his tenant a proportionately higher rent, it was obvious that that higher rental included the water-rate; if the assessment was calculated on that higher rental plus the water-rate, the water-rate was being counted twice over and the basis of taxation was accordingly being calculated improperly high for the landlord. The section, however, as altered, was confined to cases in which the tenants paid rent to the landlord and water-rate to the Government; in which case, it was quite right, in analogy with the other tenures, that the assessment should be calculated on the rent and the water-rate as the real value of the land. The original Bill contained a provision that when a cultivator or other under-tenant paid a water-rate direct to Government, the Government was to be at liberty to collect, direct from such person, the sum leviable on his land under Section 36 of the Local Funds Act,, in respect of his water-rate, or in respect of his rental, or in respect of both. But as exact provision was made in the Act, Sections 47 to 50, for the collection of the cess leviable under Section 36 from the landholder, and for enabling the landholder to recover the proportionate part of the cess from his tenants, the Select Committee considered that it would be unnecessary and undesirable to interfere with this machinery: they accordingly suggested the omission of the additional section; and, subject to the alterations mentioned, they recommended that the Bill should be passed at once. The Hon'ble V. Ramiengar was himself a member of the Select Committee, and had agreed to the amendments proposed by that examining body and to the report of their manipulation of the Bill; but he could not refrain from casting a squib into the combustible materials of which the Council was composed. The consequence was that a very lively discussion appears to have ensued, with the details of which the public have not been favoured; but we may judge of its character when we find that the Hon'ble Mr. Ellis, the Hon'ble Mr. Hudleston, the Hon'ble Mr. Carmichael, and the Hon'ble Mr. Cunningham took the leading share in the debate, which ended in re-committing the Bill for the further consideration of the Select Committee. The point on which the Bill broke down was that involved in the enquiry propounded by the Hon'ble V. Ramiengar, whether, in the event of the Bill as amended by the Select Committee being passed, Zemindars and others coming within the meaning of Clause III of Section 38 of the Local Funds Act, would not be entitled to claim the remission allowed by Section 48 of the same Act, not only on so much of the rent-value as was equal to the peshcush, but also an amount equal to the peshcush *plus* the amount of water-rate paid by them to the Government. The Select Committee have not apparently met again on this Bill, so that the entire amend-

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ment of the defective provision is still in abeyance. Meantime, other suggestions for the further amendment of the Local Funds Act will have to be considered by the Select Committee. We may mention that there is great need for some arrangement to prevent roads being destroyed by heavy traffic. Sometimes the centre of the road is made of light and elastic materials so as to provide for quick traffic, while the sides are heavily metalled for the passage of carts deeply laden. So long as these heavy carts are restrained by the action of Municipal Bye-Laws to keep to the sides of the road, no injury takes place to the centre; but when no longer restrained by Municipal edicts, carts are apt to wander all over the roadway to the serious injury of the road and the annoyance and inconvenience of passengers. Then, we may mention the very serious consideration which awaits the Select Committee in respect to increased rates for educational purposes, as pointed out by the Hon'ble Mr. Ellis. That experienced Nestor of the Council has suggested that the short Bill which had engaged the attention of the Council, should be postponed until the entire question in respect to a larger diffusion of education could be thoroughly re-considered.

Though not connected with the main subject of the present article, viz., the levy of a local cess on water-rate paid on lands for the purposes of local improvement, we may mention, as connected with local improvement itself, that a very bold attempt was made by the Hon'ble Mir Humayun Jah Bahadoor to secure to villages the blessings of sanitation provided for the larger towns. In this he failed; but it is gratifying to find that hon'ble members, notwithstanding their own happier lot in life, dwelling in large well ventilated mansions in the finer parts of the Presidency town, can turn their pitying eyes on the poor wretches herding together in poverty-stricken huts in badly drained villages outside all Municipal limits. Mr. Humayun Jah made a very effective speech, of which we can only furnish our readers with an abstract. He pointed out how much good and useful work, conducing to the convenience and health of the people, had been effected under the earlier Municipal laws, as compared with the condition of the country when no sort of Municipal laws had prevailed at all. Those earlier Municipal regulations, which proceded Acts III and IV of 1871, had been neither so strict nor had gone so far as these, simply because the country people with whom we had to deal in those days were ignorant of such measures and equally ignorant of the beneficial results flowing from such measures. It had not been expedient in those days therefore to do anything which the people were likely to look upon as new-fangled and embarrassing. But now people had begun to see and appreciate the valuable results of sanitary laws; and the speaker thought that the present would be a good opportunity to incorporate in the Bill provisions giving power to local Boards to prevent the erection of huts in unsafe places, to abate overcrowding, and to remove nuisances in dirty villages. He mentioned that many villages on the banks of rivers and streams, and in the neighbourhood of water channels and large tanks, and in low-lying ground, were so situated as to expose a portion of them at least to being inundated and washed away during unusually heavy rains. Sometimes rivers overflowed their banks and destroyed villages, as had not long ago happened in the vicinity of the Palar and other rivers, when even such towns as Vellore, Vaniambadi, Cuddalore, and Nellore had suffered severely. Villages had their ponds and hollows which served to catch a supply of fresh water during the rains, but which in the hot season turned into stagnant pools, emitting

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noxious gases and odours. Filthy heaps of rubbish and refuse, lying about in almost every village backyard, added their fatal contribution, especially when in a state of putrefaction from the action of the sun and rain, to the unhealthy condition of the neighbourhood. Then, when cholera and small-pox made their dire appearance in these localities, these scourges seldom quitted the unfortunate villages without causing serious loss of life. In an age when famine and other calamities of similar magnitude were successfully met and grappled with by measures of food supply and medical skill devised by man's ingenuity, for the purpose of alleviating human misery and saving human life, of which a glorious incident in the previous year had been imprinted on the pages of Indian History, it seemed to the Hon'ble Mir Humayun Jah Bahadoor that it would not be in vain to attempt to remedy the existing unhealthy condition of villages and their fatal influence on the lives of human beings concentrated in them. He acknowledged that the subject had of late years received much attention from the hands of Government, and that steady progress was being made in the work of improvement; but he felt that the progress was not fast enough, chiefly, as he surmised, on account of the conservative habits and the poor and illiterate condition of the villagers. It was considered, however, by the majority of the Council that, as we could not command the requisite machinery to carry out the reforms proposed in villages, the measures of improvement suggested would be simply harassing to the unfortunate villagers. These measures were admittedly excellent in themselves; but it seemed to the Council that they would not be justified in introducing into the small villages provisions that could only be worked in large towns; meantime, when any glaring nuisances were committed in villages, it was pointed out that there was power already under the existing law, to apply to the magistrate for their abatement. His Excellency the President did not forget to thank the hon'ble member for the able manner in which he had treated the question, and to gracefully acknowledge his confidence in the Government, to whose discretion he left it to extend Municipal provisions to village communities whenever it seemed to our rulers that they were prepared for such advanced reform.

CORRESPONDENCE.

LONDON LIFE.

[From our Special Correspondent.]

Sir,

It happens very opportunely that the *Mail* leaves England one day after the great annual civic banquet at the Mansion House, because I am thereby enabled to give you the gist of Ministers' utterances on the great question of the day. Last night, at the Guildhall, Lord Beaconsfield surpassed himself. At no period of his career was Mr. Benjamin Disraeli ever more eloquent, more patriotic, more firm, more self-confident, or more truly a Briton. We must go back to the days of Pitt to find any parallel speech from the lips of a Prime Minister. For quite half a century it has been the fashion to be "mealy mouthed," to discuss foreign politics with bated breath and whispered humbleness; self assertion on the part of Great Britain has been more honoured in the breach than in the observance; and more especially since Russia in 1870 defiantly tore up the treaty of Paris in our very teeth, it has been assumed on the continent of Europe that England might sometimes emit a feeble bark but would never bite. The British Lion was supposed to be tamed; John's bull-dog was considered as effectually muzzled to the end of time. But the magnificent oration of the first minister of the Crown, which positively electrified his audience in the city last evening, has effectually opened the eyes of Europe. Mr. Gladstone may go hide his diminished head; Mr. Lowe may chatter, but his day has gone by; Mr. Bright and the peace-at-any-price party are snuffed out; Mr. Forster's feeble platitudes, and Lord Hartington's tergiversations, are drowned in the loud chorus of approval which has hailed the noble and outspoken policy put forward by Lord Beaconsfield. It is impossible to abbreviate without unduly

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mutilating his choice and manly periods, so I shall transcribe some of his sentences *ipsissimis verbis*. "The Lord Mayor has told us" he said, "that England is the country of all "others whose policy is peace. We have "nothing to gain by war. We are essentially "a non-aggressive power. There are no cities "and no provinces that we desire to appro- "priate. We have built up an Empire of which "we are proud; and our proudest boast is this, "that this empire subsists as much upon "sympathy as upon force. But if the struggle "should come, it should also be recollected "that there is no country so prepared for war "as England, because there is no country whose "resources are so great in a righteous cause—a "cause that concerns her liberty, her inde- "pendence, or her empire. England is not a "country that will have to enquire whether she "can enter into a second or a third campaign. "She will commence the fight that will not end "until right is done." "How is that for high?" as the Yankees say. This outburst of patriotic eloquence was received with enthusiastic applause; and this morning Lord Beaconsfield's popularity may be said to equal that of the late Lord Palmerston in the zenith of his political career.

An armistice has been agreed to between Turkey and Servia, or rather Russia, for it is the cabinet at St. Petersburg which pulls the wires of the poor deluded puppets at Belgrade. Still the hopes of peace so generally entertained by amateur politicians and stock exchange speculators will probably prove ephemeral. The signal victories gained by the Turks rankle in the bosoms of the Slavonic societies, and Russia has committed herself too far to be allowed to withdraw from the conflict. War will either break out at the termination of the truce after Christmas, or will be renewed in the early spring; at all events, bloodshed is inevitable during the ensuing summer. The East of Europe is in an apoplectic state, and nothing but copious blood-letting will restore calmness and common sense to the excited populations and their ambitious leaders. I do not think this country will be involved, as it is quite on the cards that the Turks may lick the Russians; and should it be otherwise, the finances of the northern aggressor will be in a hopeless state of collapse long before they can be in a sufficiently advanced position to threaten Constantinople, which, after all, is the only spot that we really cling to and mean to hold to our last shilling, our last man, and our last drop of blood.

A congress of all the European Powers has been arranged with a view to finally settling the Eastern question, but the idea is a chimera. There will be a deal of talk; the post office will profit by the constant transmission of lengthy and expensive despatches and telegrams, speculators will amass and lose large fortunes by the promulgation of alternately favourable and sinister rumours; diplomates, and even Foreign Office underlings, will nod their heads with Burleigh-like sagacity; Queen's messengers will be worked to death; and penny papers will drive a thriving trade: but, as long as Russia retains those ambitious views which she shows no symptoms of discarding, a congress is simply a delusion and a snare. It is only putting off the evil day. The Prime Minister's words, to which I have alluded above, are worth half a dozen congresses. We must either bluster and frighten Russia into submission, or fight and paralyse her for another twenty years as we did in 1854-55-56.

It is satisfactory to know that we *shall* be most efficiently represented at this "political palaver" by the Marquis of Salisbury, Her Majesty's Secretary of State for India, and by Sir Henry Eliot, the present Ambassador from this country to Constantinople. The industry, talent, energy and political ability of the former are universally recognised; and his relations with our Indian Empire give him peculiar fitness for the task he has undertaken, since our interest in checking the advance of Russia towards Stamboul is entirely due to the existence of our possessions in Hindustan. Sir Henry Eliot has been tolerably well abused during the last six months, but Lord Salisbury could hardly have selected a more competent assessor. He knows the Turks and their foibles; he has valuable local knowledge, and is far more respected by the Porte than most people think.

All these political convulsions have materially affected "things in the city." In one day Russian Stocks fell 20 per cent; and there was a general stampede in Turkish, Egyptian and Hungarian bonds; but the panic only lasted about 48 hours. Many people still believe that Turkey will recover and pay up in full, and Mr. Goschen's mission to Cairo is reported to be successful; but no *bonâ fide* holders care to hold on to their Russian investments. If the Czar goes to war in earnest, he will inevitably repudiate his external liabilities, and ninety-nine people out of a hundred think he means fighting.

Far sooner than was anticipated, our arctic heroes have returned. When they quitted England in May 1875, it was understood that they might possibly regain their native shores this autumn; but at the same time, it was recognized as a matter of course that their bravery, perseverance and devotion were such as to preclude their return unless they had accomplished the object of their voyage, or ascertained beyond the possibility of doubt that further effort would only prove fruitless and quixotic. Unfortunately, the good ships *Alert* and *Discovery* have

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anchored at Spithead *re infecta*. It is now an established fact that the North Pole is not to be reached. It takes a good deal to annihilate the audacity, not to say the presumption of mankind. In numberless instances, Providence has ordained that incredible tasks should be accomplished by human agency; but, in the matter of arctic exploration, the Almighty has decreed that thus far shall we go and no further. Perhaps the failure of this last expedition is not altogether to be regretted. A successful attempt to plant the Union Jack on the apex of the terrestrial globe might have considerably inflated the denizens of Great Britain with national pride: some few atmospherical problems might have been partially solved; the extreme limit of human endurance might have been tested; but the utility of any information that could possibly have been acquired, I for one respectfully take leave to doubt; and my opinions are by no means unique. If a north-west passage had been discovered, it would have been impracticable for ninety-nine years out of a hundred. Beyond a certain latitude no living creatures existed; so that neither Christianity, nor commerce, nor zoological research could have profited. We have already sacrificed many of our countrymen's lives in vain attempts to penetrate the innermost regions of the Pole; we have exposed numbers of our enterprizing sailors and other devoted enthusiasts to unheard of suffering and privation in the same cause; we have in the last forty years thereby acquired no information of real practical value, either in a mercantile or scientific sense; and I fervently hope that the North Pole will henceforth be laid on the shelf, not only by responsible Governments, but also by geographical and philosophical societies in general in every civilised quarter of the globe. It is very easy for a Fellow of the Royal Geographical Society to preach in Albemarle Street; it is allowable for a sensational writer of leading articles to pen magniloquent phrases which spur on young and old to undertake hopeless enterprises; it is excusable for certain Governments to provide funds for such hopeless undertakings, when the will of the nation dictates that it must be done; but common sense must prevail in the end, and let us all hope that we have heard the last of arctic expeditions, at any rate in this generation. Meanwhile it may be interesting to give some account of what Captains Nares and Stephenson have done and what they have "*nolens volens*" left undone. The way selected by this last expedition of 1875 was the most hopeful of all seemingly practicable routes, and was adopted as such after repeated failures by others. The two vessels engaged were provided with every requisite appliance, with every aid which the finite mind of man could devise, with every comfort and assistance which human foresight could furnish. All the members of the "forlorn hope," as it may be termed, were picked men, brave, fearless, persevering, unselfish, noble-minded, skilled and seasoned explorers. The adventurers passed a miserable winter, during which for 160 days or more cimmerian darkness prevailed, and at the commencement of what is called spring in those desolate regions, two parties started on sledges to seek the North Pole, leaving their ("no longer floating") homes embedded in the ice. The perseverance, the endurance, the sufferings, the indomitable pluck of these two pioneering bands, I have not space to dilate on; the result is what we have to consider. After penetrating to within 400 miles of the envied spot, they recognised that further efforts were useless. An unbroken tract of ice lay before their eyes. Hummocks, glaciers, snow drifts, no sign of vegetation or of life, an insupportable temperature of eighty or ninety degrees below zero, and no possible hope of amelioration in scene or climate. Add to this that nearly all the adventurous exploreres were half-dead with scurvy and frost-bites and exhaustion, and no one will gainsay their common sense in at once retracing their steps. The journey back to the ships was naturally more tedious and painful than the outset. Weakened by disease, disheartened by failure in their most cherished desires, and short of provisions, it is a miracle that they succeeded in retracing their steps with so little loss of life. Whatever reward Captains Nares and Stephenson may receive for their skill and devotion, I think no recompense can be too great for their forbearance and common sense in recognising the hopeless nature of the task set before them. All humane minds must applaud them for returning with the loss of only four men, whereas had they been obstinate and reckless, and thirsting only for personal glory, the mortality among the crews might have been appalling. It is a pity that the enthusiastic welcome accorded to the expedition on its return to Valentia, Cork and Portsmouth, has been slightly marred by a trait of official "idiotcy" (I should not like to say "spite"). The Board of Admiralty has positively censured Captain Nares for leaving his ship at Valentia in order to bring his despatches more speedily to "my Lords" at Whitehall. Let this pass. Let the people of England remember that Nares and Stephenson have solved the arctic problem by determining that it is insoluble.

Mr. Stanley, the celebrated African traveller, who was fortunate enough to discover Dr. Livingstone, and who subsequently received such an enthusiastic reception in this metropolis, appears to be getting into hot-water, not only in the heaven-forsaken country which it delighteth his soul to explore, but also in New York and London. Flushed with his last success, brave, energetic and persevering, as I myself from personal experience knew him to

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be, and likewise probably tempted by the liberal subsidies placed at his disposal by the *Daily Telegraph* and *New York Herald*, he started some two years back like a giant refreshed to glean fresh facts anent the interior of Africa, to find out if possible more sources of the Nile, and, as the sequel proves, to make himself generally disagreeable to the unfortunate tribes whom he chanced to encounter on his path to scientific and geographical victory. From time to time, but at very long intervals, his despatches have reached and been printed in the columns of the *Daily Telegraph*, but his last budget discloses some rather startling facts. Probably Mr. Stanley has been sojourning so long among the savages, that he hardly realises the light in which his atrocities would be regarded in the civilized West. However that may be, the facts remain recorded in his own hand-writing. He is simply a traveller, and to all intents and purposes he is "invading" a country to the entry of which he has no moral or political right, should the Governor or inhabitants of the district object. Ignoring this palpable political fact, Mr. Stanley has, on the slightest show of incivility or opposition, committed a series of murderous and unjustifiable onslaughts on the African recalcitrant tribes, a line of conduct which his superiority in tactics and weapons enabled him to follow with comparative impunity. The self-satisfied periods in which Mr. Stanley described his advance, his prowess and his gratified ambition, at first imposed upon the British Public, but a calmer consideration of the facts produced a strong revulsion of feeling. I cannot do better than transcribe the pith of a memorial on the subject which has been submitted to Earl Derby, our Foreign Minister, and his reply thereto. The document draws his Lordship's attention to the following facts: That "the attitude of the natives of Bambireh Island towards Mr. Stanley might have been slightly dangerous," but that he "resumed his voyage without having experienced any personal violence;" that "Mr. Stanley's narrative does not warrant his supposition that his life was in danger," that "it is respectfully submitted that the destruction of forty-two human beings, and the probable death of a hundred more from wounds, was an act of blind and ruthless vengeance, calling for severe animadversions from Her Majesty's Government;" that "the security of future travellers, as well as the cause of humanity, demands interference;" and that "although it is not known what may be Mr. Stanley's real nationality, as he hoisted the English flag upon the occasion of his second onslaught, an official repudiation of his claim to be regarded as a representative of England appears to be imperatively called for." The reply runs as follows: "His Lordship has read with great regret, &c., &c. It is however impossible to take any direct action in the matter, as Mr. Stanley is not a British subject." His Lordship cannot but hope that "Mr. Stanley may eventually be able to afford some explanation or justification of his proceedings." "Mr. Stanley has no authority to hoist the British flag, and Lord Derby will cause Her Majesty's Consuls on the East Coast of Africa to intimate this to him whenever an opportunity of communication may offer." This correspondence speaks for itself. Mr. Stanley has no doubt committed what it is now the prevailing fashion to dub "atrocities," but there are not wanting excuses for his summary proceedings. Panic is answerable for a good many cruel deeds, and although I would not insult Mr. Stanley by suggesting that he for one moment yielded to nervousness or pusillanimity, it is impossible to ignore the facts which occurred in Jamaica under Governor Eyre and his subordinates; it is equally out of the question to forget the wholesale slaughter of sepoys in 1858; it is no less difficult to put aside the consideration of what the much-abused Turks were more or less forced to do during the late formidable insurrection in Bulgaria, all incidents more or less attributable to panic. If the natives of Central Africa cannot be conciliated, they will certainly never be coerced. Therefore, whatever explanation may ultimately be put forward, it is undoubtedly unfortunate that the latest pioneer of civilisation substituted explosive bullets for moral persuasion.

The "cause célèbre" of the present hour is the trial at Moscow of Dr. Strousberg. He was accused and has been convicted of fraudulently obtaining advances from the Commercial Loan Bank in that city, and of bribing therewith certain directors who aided and abetted his nefarious schemes. He is not the first great magnate of finance who has employed equally dubisome expedients for sustaining his credit; but then his fiscal devices have ended in failure; he has committed the unpardonable crime of being found out, and he must pay the penalty. It is truly amusing to peruse the virtuous outbursts of indignation which adorn the columns of the Russian Press. If there is a corrupt country in Europe, nay in the world, it is Russia. She is rotten to the core; every functionary, from the deputy assistant clerk to a constable to the judge on the bench has his price. The key of a railway carriage, and the instrument which unlocks the innermost sanctum of a State Minister, are alike to be purchased. A conviction or a pardon are only too frequently dependent on a given number of roubles. And yet not only Russian journals vaunt their impeccability, but even the public prosecutor denounces Dr. Stronsberg as a man "bent upon cheating the honest Russians." The career of the accused man has been remarkable. He began by undertaking small contracts in the construction of Prussian Railways;

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his schemes prospered, his fortunes expanded, and his enterprise took a wider field. He "went into" ironworks, coal mines, locomotive construction works, building and water-works; every thing prospered; his magic touch turned dross into gold; and in 1870 he was *bonâ fide* the possessor of three millions sterling. But the energetic and successful speculator knows not when to stop; he cannot realise that the tide of prosperity which has flowed so long for him must inevitably ebb with even greater rapidity. The war-cloud burst, credit fell, his securities were unrealisable; he was too Napoleonic to accept the situation; he would not abdicate his throne of millionnaire and retire on a lavish and yet assured competence. No! his motto was "*tout peut se rétablir.*" He held on; he fought bravely at first, and later on cunningly, but too cunningly; cleverness dwindled into rascality, and he fell. Strousberg was the German "George Hudson;" their careers were strangely alike. Both were energetic and untiring speculators; both were successful beyond human anticipation; both conferred enormous benefits on their respective countries, and on civilisation in general, by their reckless commercial enterprise and illimitable expenditure of other people's capital; both were maligned by those who had earned or rather realised large fortunes under their guidance and advice; both were courted by noblemen and revered by princes; both were morally kicked by society when reduced to beggary; Strousberg and Hudson were vultures who battened freely on the golden carrion so liberally cast before them by a speculative public. Strousberg's sentence is deferred.

I alluded in my last letter to the astonishment caused not only in India but also in this country by the peremptory utterances of Lord Lytton with regard to the case of Mr. Fuller. English opinion has been still more stirred by the announcement that Mr. Weld, a member of the Civil Service and a Magistrate in Madras, has been suspended for two months for causing the exhumation of the body of a Brahmin from the banks of the chief drinking water tank in accordance with the representations of the Municipal Surgeon. And to our still further surprise, we are informed that the Madras Government have apologised and have given the relatives 800 Rupees for a second burial. Can this tale be possibly authentic? Every one knows the supercilious indifference of natives to sanitary matters; and are they to be allowed to inter their dead in our water tanks? If this sort of thing is to go on, where is the use of attempting to check fever, cholera, or small-pox? If our friends and relations are expected not only to sweat and groan under an Eastern sun for the welfare and maintenance of our oriental possessions, but also to contentedly replenish their filters and drinking cups with a fluid impregnated with the deleterious gases of defunct Hindoos, it is about time to tell Viceroys and Secretaries of State that the Indian Empire may go to pot, and that Englishmen will not submit to be gratuitously poisoned, because those in authority think it politic not to offend native prejudices.

I am, &c.,

PERIPATETIC.

LONDON, 30*th November* 1876.

DEPRECIATION OF SILVER.

THE following letter extracted from the *Daily News* will be read with interest by residents in India, connected with Indian commerce :—

"SIR,—I have read with much interest your two last articles on the depreciation of silver and its effects upon our Indian Empire, and if I venture to trouble you upon this very important question it is because, as an East Indian merchant of some years' experience, I have lately seen a great change coming over the commerce of that country which, I think, augurs well for the future, and makes me take a much more hopeful view of the subject than any I have yet seen discussed. The difficulty in which the Indian Government now finds itself is this—Its revenue is mainly derived from land which it has settled either in perpetuity, or for very long periods, for the payment of a certain yearly sum in silver, and while its revenue thus remains unaltered it finds that this revenue does not now go so far as it once did in the payment of liabilities which it incurs in gold. *It has made a bad bargain, and if it had to settle its land over again it would require a larger sum in silver from its tenants.* Does not this point to a very great advance in the prosperity of a very large class in India, the holders of land, who are paying a greatly reduced value for it, and as I shall presently try to prove, are receiving not only as much, but more, out of it than they ever did before? I know well that men with great knowledge and experience of India, such as Lord Northbrook, Sir George Campbell, and others, of whose opinion I would wish to speak with the highest respect, have recently seemed rather to take the view that he must be a very bold man indeed who would venture to propose a new tax for India; but it seems to me that if it is only right and just

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that Government should remit taxation, as it has done at times when, through exceptional circumstances, it fell heavily on some particular district, it is equally right and just that a class which has become exceptionally prosperous should be called on to contribute according to its prosperity, to the revenue of its country, especially as I shall try to show that this prosperity, caused by the depreciation in silver, is vastly in excess of the loss which the revenue suffers from the same cause.

The landed proprietor now receives a relatively larger amount of silver for his produce than he did before. Taking the present value of the Rupee at 1*s.* 6*d.* sterling, the English merchant has now to send 25 Rupees for every £1 of produce he wishes to buy, instead of 20 Rupees as formerly. The English merchant is no worse off for this, as he can now buy 25 Rupees for £1, instead of 20 Rupees as formerly. But the landed proprietor pays the Indian Government no more for the land which grew this produce, and yet he gets 5 Rupees more for it. Not only that, but the railway company charges him no more for the carriage of it to market. As a matter of fact the railway companies have recently very wisely reduced their rates of carriage, and he now finds that whereas formerly he could only send down his most valuable produce to market, he can now send wheat, seed, and all sorts of low-priced produce, which formerly could not afford to pay the railway carriage. The consequence of this is that large districts in India which formerly had no outlet for their produce, and therefore no object in producing more than they could consume within themselves, have now been brought within reach of the exporting markets; and a natural impulse has been given to agricultural industry throughout the country which it has never had before, and which will do more to promote it than all the artificial aids with which Government and Manchester Cotton Supply Associations have at times attempted to stimulate it for the fostering of their own particular hobbies. The increase of traffic on the railways will alone go far to help the Government in its difficulties. That this is not merely a hopeful theory which I am propounding, the statistics of the exports from India this season, and in fact ever since the price of silver showed a marked decline on former years, clearly prove. In no other way can the enormous increase in the exports of seed and grain, especially from the West Coast of India, be accounted for.

Take as an example the one article of linseed. Formerly the export from Bombay was, I think, even in the largest years, much under 20,000 tons, this season it bids fair to reach 150,000 tons; and what is true of linseed is true, if in a lesser degree, of all kinds of seed and grain. It is not the price here or any excessive demand which is producing this enormous export. Prices, most people would say, are abnormally low, and the demand to sell, if I may use the expression, was greater than the demand to buy. Such were the quantities of seed offering from India this season, that prices were forced lower and lower, and yet even now, after all this enormous export, when one might have expected to find the crop exhausted, there seems as much offering as ever. Much of this trade passes unnoticed here, for it is with the Continent that the bulk of it is done. In the south of France, and to some extent in Italy, India appears in a fair way to obtain a monopoly for the supply of seed to these large consuming countries. She is pouring in her rapeseed into France to compete with the colzas of that country and Germany. In the linseed trade she bids fair to beat Russia altogether out of the market Here then I maintain is a prosperity spreading throughout all the land, and reaching districts where it was hitherto little known, and I firmly believe that much, if not all, of this is the effect of the depreciation of silver. So far I have endeavoured to show what the country has gained. I will now endeavour to show that the Government is not altogether a loser. In the first place it must not forget that it borrowed about £70,000,000 sterling; but as it only promised to pay in silver, it now only owes, taking the value of the Rupee at 1*s.* 6*d.* sterling, £52,500,000, a difference of 17½ millions in its favour. In the next place, when it engaged its servants, both civil and military, it promised to

pay them a certain number of Rupees while in service, and to allow them to retire after a certain number of years with a pension still payable in Rupees; and they, believing a Rupee was worth 2*s.*, accepted these terms. It is too late for most of them to go back now. Many have retired from the service on their pensions; the others, except perhaps the very youngest, having already served some time, would not only sacrifice their present position, but would lose the certainty of a pension when they had served a certain number of years, a provision which is in reality a part of their pay. Both of these, however, although intrinsically gains to the State, do not help the revenue, as there is still the same number of Rupees to pay.

On the other hand, the railways, as I have already shown, will be more productive; they seem to be so even now, if one may judge from the latest traffic returns. Besides this, the value, at least in silver, of all articles on which Government levies taxes must rise; and this while only a nominal gain to the State is an actual gain to the revenue, while if increased prosperity leads to increased imports or production, it will be an actual gain to both. It is, therefore, only when the Government has to send money to this country to pay debts incurred here that it begins to feel the reduction in the actual if not in the nominal amount of its revenue. Speaking roughly, the amount annually required is nearly £16,000,000 sterling, and as long as the Rupee did not fall under 1*s.* 9*d.*, the Government did not appear to find their revenue insufficient. With the Rupee at 1*s.* 6*d.*, then, the difference to make good would be about 12 per cent, or about £2,000,000 sterling. A large part of this money is sent home to pay the dividends on the railways; but if the traffic increases to the equivalent of the loss in the exchange, the revenue will not suffer. In the same way that part of the amount which is required to pay premiums, which are as a rule, I believe, payable at the exchange of the day, will not be affected by the fall in silver. A further amount is required to pay for military and other stores, and I have no hesitation in saying that here there is room for economy, intelligence, and, above all, supervision. Many of the articles could be bought as good or better, and much cheaper in India, either of Indian manufacture or imported there. To me, therefore, it appears to be the imperative duty of the Government, which has the means of information at its command, to go carefully into these and all similar matters. Let it economize wherever it can, in its Home Government, its civil and military service, its public works, and the purchase and expenditure of its stores. It says openly enough it is in difficulties; let it act as an honest man would who finds himself in difficulties; let it curtail its expenditure to the lowest possible limits. Let it then put the gain—and, I think, there will be found to be at least some gain by the depreciation of silver—against the loss which it has caused; the balance will, I believe, be smaller that was anticipated, and will grow smaller still as time goes on and India prospers. Let the Government then take counsel as to what tax it can best devise which will fall on those who have gained most by the recent change, and thus make good the deficiency in its revenue. Some tax, falling on the landed, the agricultural, and, perhaps, the mercantile classes of the community, would be just, would not, I think, be oppressive, if some system can be devised by which it can be levied without extortion, the great evil of direct taxation in India; and, if well adjusted, falling, as it would in reality, on the rapidly-increasing exports of India would be little felt, and would not, I think, in any way interfere with or curtail them."

HIGH COURT—MADRAS.

MORGAN, C. J., AND HOLLOWAY, J.

Hindoo Law—Undivided family—Purchase and mortgage by managing member—Claim of members to family property free from incumbrance—Costs.

A, B, and C were three undivided brothers who did not divide till February 1873. *A was managing member. In* 1867 *and* 1869 *he purchased for the family two estates for Rupees* 83,000 *and Rupees* 56,000 *at Court sales. After purchase, A hypothecated these estates to certain Chetties for moneys borrowed. The*

Chetties sued A alone in 1873, excluding B and C, and obtained a decree on the mortgaged estates which they purchased in execution. B and C set up division, and sued A and the Chetties for the recovery of their share of the family property free of all incumbrances. The Chetties contended that as they had advanced their money to A as managing member, they were justified in holding the entire estate answerable for their claim.

HELD *by the High Court that the suit against the Chetties ought to be dismissed. The money was found to purchase the estates; the estates were purchased with that money; and the mortgage was made as security for the money so employed. The division set up was in fraud of creditors; and although the brothers B and C should have been included in the suit by the Chetties against A, the omission could only affect a question of costs. As B and C had a right to be satisfied by evidence that their elder brother A had done an act which was capable of charging them as well as him, the suit should be dismissed without costs.*

R. A. 73 *of* 1876.

Dalavoy Theetharappa Mudali and another v. Dalavoy Ramasamy Mudali and eight others.

THESE were cross appeals from the decree of the District Judge of Tinnevelly in Original Suit No. 18 of 1875.

This was a suit brought by plaintiffs to recover their share of family property, real and personal, valued at Rupees 54,937-12-11 free from all incumbrances, and to uphold the plaintiffs' right to the outstanding balances amounting to Rupees 8,250.

The following is the judgment of the District Judge.

F. C. Carr, Esq.

"The plaintiffs and the first defendant occupy the same position as they did in Original Suit No. 12 of 1873 on the file of this Court. It is admitted that they are brothers, but the first defendant Dalavoy Ramasamy Mudali was adopted by his senior paternal uncle Theetharappa Mudali, and hence that in a division between the brothers he is entitled, as his uncle's representative, to a half share, and the two plaintiffs as their father's representatives, are entitled to the other half share.

The elder brother managed the whole property during the days of their prosperity, and all the sales and purchases were effected by him. They remained undivided until February 1873. In November 1867 the zemindary of Oormenialaghian was sold in Court auction for Rupees 83,000, and it was purchased by the present first defendant Dalavoy Ramasamy, the money being credited to the decree amount in Original Suit No. 5 of 1864. He obtained the sale certificate in his name on the 14th October 1868. On the 20th December of the following year the estate of Chokkumputty was sold in Court auction and was purchased on behalf of Dalavoy Ramasamy by Iswara Moortia Pillai, the second witness for the plaintiffs. The day-money or deposit of Rupees 14,000 was paid that day, and the remaining three fourths, viz., Rupees 42,000, were paid on the 4th January 1870. The sale certificate for this sale, in the name of Dalavoy Ramasamy (Exhibit XII), was issued on the 13th April of the same year. At the time of these purchases, and until the institution of Original Suit No. 12 of 1873, the plaintiffs, who are the younger brothers of Dalavoy Ramasamy, lived with him; and although the whole management of the property was in the hands of the elder brother, they showed, by numerous actions, ample proof of which is to be found among the title-deeds which have been filed in the present case, that they agreed to all his actions. There can therefore be no hesitation in reiterating the finding on the point in the former suit which was confirmed by the High Court on appeal, that these mittahs having thus been acquired by the first defendant in his capacity of manager were in every way not his private, but were family property, in which his younger brothers had a share equal to his own. Sixteen days after the purchase, Dalavoy Ramasamy executed a hypothecation debt bond (Exhibit III) to the firm, who are now represented by the second, third and fourth defendants, for Rupees 57,000, hypothecating the above estates; and on the 14th December 1871 he renewed that bond by another filed as Exhibit IV, and a further bond was executed by him for Rupees 12,000 a few days afterwards. On 3rd March 1873, these merchants brought Original Suit No. 51 of 1873 in the Subordinate Court against Dalavoy Ramasamy on the above mentioned three bonds, and obtained a decree thereon (Exhibit IX) on the 9th April 1873 against the first defendant and the hypothecated property. In July 1873 this same property was sold in execution of a decree in Original Suit No. 5 of 1872 on the file of this Court, but on a petition (Miscellaneous Petition 786) of the Chettiars, the decree-holders in Original Suit No. 51 of 1873, the sale was subject to the mortgage lien which had been established by their decree. The estates therefore realized a merely nominal sum. In September 1874 these Chettiars, proceeded to execute their decree and the properties were sold to them, the certificates [III. 1 to 6] which are dated in October and November 1874, giving the particulars of the sale. The object of this suit is to establish the point that these sales did not affect the interest of the younger brothers, but were only valid to pass the half share of Dalavoy Ramasamy to the purchasers. The purchasers, on the other hand, contend that their money was advanced to Dalavoy Ramasamy when he was

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the sole manager of the family to purchase the estate, and that they are therefore justified in holding the whole estate answerable for the liquidation of the debt.

The issues settled were :—

1*st Issue.*—Whether the alienations made under the authority of and by the first defendant to defendants two to nine are binding upon the plaintiffs or not ?

2*nd Issue.*—What is the amount of the mesne profits, &c., to which plaintiffs may be entitled ?

The plaintiffs, by their oral evidence have endeavoured to show that although it was entered in the bond (Exhibit III) that the Rupees 57,000 was advanced in January 1870 for the purchase of Chokkamputty, yet that it was not really advanced for that purpose, but the purchase was effected by the proceeds of the sale of ancestral property. Numerous deeds have been produced showing that between 1868 and the end of 1870 family property to the value of Rupees 70,000 was sold by Dalavoy Ramasamy. These are produced and proved by witnesses three to fourteen, twenty to twenty-four and twenty-nine. The first witness Alagappa Pillai was an accountant under the first defendant up to the time of the purchase, and the second witness Iswara Moortia Pillai, is accountant now under the plaintiffs. They both speak to the same point, and allege that the loan of Rupees 57,000 by the Chettiars was to pay other debts and not to purchase Chokkamputty. The eighteenth witness speaks to the great prodigality and extravagance of the first defendant in the year 1864-65, when he went to Madras and Benares, thereby sowing the seed for a large crop of debts. Dalavoy Ramasamy also, in his evidence as the defendants' sixth witness, says that it was from compulsion that he stated in the bond (Exhibit III) that the money was borrowed to purchase Chokkamputty but that it was not so really. The compulsion used was that he was told that unless he so entered he should not have the money. The defendants' other witnesses on the other hand speak most positively to the fact that the money was borrowed then for that purpose only, and their statements are in accordance with the accounts Exhibits VI and VII. From this I find it proved that the money for the purchase of Chokkamputty was borrowed as stated in Exhibit III from the Chettiars.

The next point for consideration is as follows :—

Granting that the plaintiffs were responsible for the loan contracted by Dalavoy Ramasamy when he was managing the affairs of the family and for the purpose of purchasing a property which thereby became not his own but family property ; and further marking that in February 1873 the plaintiffs divided from Dalavoy Ramasamy, it is a question whether the Suit 51 of 1873 (Subordinate Court) which was brought after this division against Dalavoy Ramasamy only, and in which the decree is given against him only, the estate being held security, can be operative over the share in that property which undoubtedly belonged to the plaintiffs ? The plaintiffs say that they used all their endeavours to be taken as parties in that Suit 51 of 1873, but without availand ; that consequently, and as the Chettiars deliberately excluded them in the hearing, although knowing they were divided from Dalavoy Ramasamy, the decree cannot be binding upon their share of the estate ; and that independently of the nature of the original debt, the Court must now only consider what was the nature of the remedy sought by the creditors in Original Suit No. 51 of 1873, when estimating what passed by the sale in execution. The plaintiff's vakil referred to the cases, *Nugenderchunder Ghose* v. *Sreemutty Kaminee Dosse*, reported at page 241, Volume XI, Moore's Indian Appeals, and *Baijun Doobey* v. *Brij Bhookun Lall Awusti*, quoted at page 68, Volume XI, *Madras Jurist*; but neither of these cases fully covers the present question, since there had been passed therein merely personal decrees ; and it was held by the Privy Council in the latter case that the decree being a personal decree against the widow, all that could be sold under the decree was the interest of the widow. The decree, however, in the present instance was more than a merely personal one against Dalavoy Ramasamy, it was directed also against the estate. The vakil for the Chettiars (defendants two to four) on the other hand urges that the money was lent to Dalavoy Ramasamy alone to buy a particular property, and that he bought the property with their money and executed hypothecation bond to them, and therefore, as they gave, so they seek return of their money. He admits that there was knowledge of the division, but adds that it was considered by the creditors to be a fraudulent division, an opinion endorsed by the Court in its judgment in Original Suit No. 12 of 1873. The plaint (Exhibit CC) in Original Suit No. 51 of 1873 on the file of the Subordinate Court was put in on the 6th March 1873 by the Chettiars against the first defendant Dalavoy Ramasamy, and it was on the 3rd April 1873 that the plaintiffs put in their petition (Exhibit DD) praying that they might be made parties, in order that they might show that property which did not then belong to Dalavoy Ramasamy should not, now that they were divided, be held answerable for the debt. On the 8th April the following order was passed upon their petition :—"The petitioners may come in "to represent their claims at the execution of "the decree ; as matters now stand, as plaintiff "asks to proceed against the defendant alone, "and begs me to grant him the relief provid-"ed for by the document A, I think it not "necessary to include these petitioners in the "case."

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The following day the case was heard *ex-parte* against the defendant, and the decree was passed against him, the estate being held security. The defendants' vakil at first suggested that the separation and the desire of the plaintiffs to be made parties in the suit was unknown to the Chettiars, but the (Exhibit EE) deposition given by their agent in Original Suit No. 12 of 1873 on the 18th November 1873, as the second defendants' first witness, is quite conclusive on that point. He says, "I am "the agent of Ravana Mana Thana Ana Roona "Arnachellam Chetty. In Original Suit 51 of "the Subordinate Court he is the plaintiff, and "another firm. It was by me that the vakil "in that case was instructed. All the work of "my master is done by me. There is no decree "against the present plaintiffs in Original Suit "51—but only against first defendant and the "mortgage property. The case is still pending "in execution. I have not joined these plaintiffs in that case. They wanted to be made "supplemental defendants. I said it is sufficient if I get decree against the first defendant "and the mortgage property."

Exhibit FF shows further how the plaintiffs put in an objecting motion when the mittah was attached and again asserted their division; the petition was however rejected by the Subordinate Judge, who considered that the plea of the plaintiffs was not sustainable, and directed the right, title and interest of Dalavoy Ramasamy Mudali in the mittah to be sold. The notices and certificates of sale which have been filed show that it was that interest alone which was sold. Now it is quite clear that the interest of Dalavoy Ramasamy, even if the deed of division had not been given effect to, was only one half. He had been no doubt the managing member of the family, but he was not sued as such, and the plaintiff in Original Suit No. 51 of 1873 never once speaks of him as the managing member of the family, nor seeks to bind the family through him: and the intentional exclusion of the plaintiffs who were in Court, in order to get an *ex-parte* decree against the absent defendant, shows at once that the interest which passed at the sale under that decree can only have been the personal interest of Dalavoy Ramasamy, and that the half share of the plaintiffs remains unaffected by the sale. The plaintiffs' vakil further points out that the price realized at the sales, viz., Rupees 30,000 for the mittah of Chokkamputty which had been bought for Rupees 56,000, and Rupees 4,000 for the one-sixth of Oormenialaghian, which had in all cost Rupees 83,000 are some indication of what it was that really passed at the sale. No doubt the argument has this negative value that had the prices realized reached the full value of the estates, the purchasers might then have been considered as believing that they were bidding for the whole estate. Beyond this I do not think the argument can be forced any further. Next as regards the question of the mortgage-deed to the eighth defendant. This deed was executed for Rupees 10,000 lent by the eighth defendant to Dalavoy Ramasamy on the 10th May 1867. At that time and for some years afterwards Dalavoy Ramasamy was the managing member of the family, the plaintiffs lived with him, acquiesced in all his deeds, and distinctly showed their acquiescence in this particular mortgage-deed by themselves attesting it. Their vakil attempted, by referring to the case of *Rajam* v. *Basuva Chetti* (High Court Reports, Volume II, page 434) to show that the signatures only implied knowledge of the transaction and not acquiescence. I have not the least doubt that there was in this case full acquiescence and assent by the plaintiffs in the mortgage by Dalavoy Ramasamy, and they are absolutely bound thereby. The result of this judgment is to declare that the plaintiffs' share in the estate of Chokkamputty, in one-sixth estate of Oormenialaghian, and in the lands specified in paras 2 and 3 of Schedule IV of the plaint, which share is one-half share, is declared to be unaffected by the sale of the right, title and interest of Dalavoy Ramasamy Mudali in execution of decree in Original Suit No. 51 of 1873 on the Sub-Court's file to the defendants two, three and four; and further to declare that the plaintiffs having acquiesced in the alienation of one-third of Kidarangolum by Dalavoy Ramasamy Mudali to the eighth defendant on the 10th May 1867 are bound thereby, and are not entitled to recover any portion of the same, and to declare that the interest of the plaintiffs, which is a half interest, in the outstandings specified in the seventh schedule of the plaint, were not affected by the sale to defendants two, three and four. *It is* only with these matters that the Court can deal in this suit; between the first defendant and his brothers there is now no point in issue, and they have also met in a suit before relative to their shares. All the costs of the plaintiffs will be borne by the second, third and fourth defendants, and the eighth defendant's costs will be borne by the plaintiff; and the defendants five, six, seven and nine will be exonerated from the decree in accordance with the razeenamahs which have been field."

From this decision both plaintiffs and defendants appealed to the High Court, the former on the ground that the decree of the District Court was contrary to law and against the weight of evidence in that the Lower Court decided that the plaintiffs were bound in the matter of the alienation by Dalavoy Ramasamy Mudali to the eighth defendant; and that plaintiffs were not entitled to recover any portion of the same.

The second, third and fourth defendants appealed to the High Court against so much of the decree of the District Court as declared the title of plaintiffs to a moiety of the

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lands in the possession of second, third and fourth defendants, and the outstanding judgment-debt mentioned in the schedule attached to the plaint. They urged that "upon the findings of fact in the case, the District Judge ought to have held the plaintiffs bound by the sale in execution of the decree in Original Suit No. 51 of 1873; that plaintiffs were entitled to no share in the estate inasmuch as the same was the self-acquisition of the managing member, it having been purchased entirely out of the loan advanced by the said defendants; that the estate having been sold for realizing the very debt which was contracted for its acquisition, the plaintiffs were not competent to impeach the sale; that under any circumstances the plaintiffs could not be entitled to their share in the estate without payment of their share of the purchase-money with interest; that the District Judge misapprehended the effect of the orders of the Subordinate Judge passed on Exhibits DD and FF, in holding that only the share of the first defendant could possibly have passed by the sale in Original Suit No. 51 of 1873; that the said orders clearly showed that the defendants insisted on a decree against the whole of the mortgaged property and not the first defendant's share only; and the decree was accordingly passed. FF2 further shows that the plaintiffs' share was not released from attachment, and that, being comprised in the property mortgaged, it was included in the sale; and that the debt sued for in Original Suit No. 51 of 1873 having now been found to be such as would bind the plaintiffs, their share also in the estate sold had effectually passed to the purchaser, though they were not joined as parties to the said suit.

S. Nullathumby Mudaliar for appellants in R. A. 70 of 1876.

V. Bashayam Iyengar for appellants in R. A. 73 of 1876.

The High Court delivered the following

Judgment:—14th November 1876.

In this case the Judge has made a declaration in plaintiffs' favour as to a portion of the property. The effect of it will be to render the execution of it by the Chetties unavailing as to so much of their security as would have accrued to the plaintiffs upon a division of property unencumbered.

The ground is that the plaintiffs were excluded from the suit in which the decree was made.

The case quoted from XI Moore, has no bearing; for the ground of decision was that, though the nature of the loan may have been such as to create a charge, it could not be so enforced in execution of a mere decree in a suit against the widow for a money demand. Here the suit was to enforce the demand and charge, and the only question really is, Was the mode in which it was created by the one person (the eldest member) such as to bind the shares of the other members? That this matter might and should have been brought to a decision in the former suit there is no doubt. The only effect, however, of the resistance of the Chetties can be as to the matter of costs. It clearly cannot be used to prevent the dismissal of the suit as against them, if they have proved that the charge was well created as against the plaintiffs as well as their brother. The plaintiffs and their brother, doubtless with a view of defrauding creditors, almost contemporaneously with the former suit made this division which has been elsewhere found to have been made for the purposes of fraud. They seek here simply to have the shares claimed, delivered as unencumbered. They do not ask to be allowed to redeem, and in fact refused to make any offer when the option was given. It is plain, therefore, that in this suit so framed on the findings of the Judge, that the money advanced was for the purchase of the estate of Chokkamputty, that it was purchased with that money, and that this mortgage was made as security for that money so employed, the suit ought to have been dismissed against the Chetties. No attempt has been made to impeach the evidence of these facts.

The Judge has justly found that the evidence which sought to show that the money borrowed was not so employed, is unworthy of belief, and the application of the money asserted by the defendants is clearly proved. There is a large mass of evidence showing this, irrespectively of the recital in the document itself. In one of these cases one of the plaintiffs attested the document which he afterwards sought to impeach. The case seems to be a very clear one, and the suit would have been dismissed with costs, save for the exclusion of the plaintiffs from the former suit.

They had a right to be satisfied by evidence that their elder brother had done an act which was capable of charging them as well as him. The suit will, therefore, be simply dismissed. There will be no costs throughout, for there is a great deal of evidence that the plaintiffs were privy to the whole matter.

HER MAJESTY'S PRIVY COUNCIL.

[BENGAL CASE.]

Mahomedan Law—Transfer of property—Will.

D H died in 1841, *possessed of half a large zemindary and left five sons and five daughters. According to the contention of one side, he left five widows; and according to the contention of the other, he left one wife and four concubines. E, D H's eldest son, possessed himself of all the property of his deceased father by virtue of two documents which he set up, one a deed of gift and the other a Will. K*

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the widow of N, the third son of D H, as guardian and protector of her infant daughter R, sued to set aside the deed and will. The Civil Judge decided that both the documents were executed by D H, that the deed was valid, but that the will was invalid because it had not obtained the consent of the heirs other than E. Pending this suit, E had instituted a cross suit against K for the purpose of carrying into effect an alleged compromise to which he said she was a party. This she denied; but she afterwards filed a deed of compromise which had a statement that her daughter R assented. R was also represented as a party to the transaction and as asserting herself to be of age. That compromise was given effect to by the Civil Judge as also by the Sudr Dewanny Adawlut Court, which gave a decree in terms of it. R married a member of the other branch of the family who possessed the half of the zemindary other than that which was held by D H, and in 1860 she filed a suit in which she asserted that she was no party to, and had no knowledge of, the compromise between E and her mother; and that it was effected by fraud and collusion on the part of both of them. She prayed for the setting aside of that compromise and, in substance, for a review of the judgment of the Civil Judge so far as it was against her. She made also two principal claims; the first to a share derived by her father from his brother E H who had died before him; the second to a share in right of her grandmother B L, whom she alleged to have been a wife of D H.

HELD, *that there was no intention on the part of D H to part with his property at once to his son; but that both father and son were endeavouring to evade the Mahomedan law, by representing that to be a present transfer of property which was intended only to operate after the father's death; that the will in its general scope appeared to be in contravention of Mahomedan law; that the survivorship between E H and N being a question not made clear from documents set forth was not satisfactorily proved; and that there was sufficient evidence not only from the acknowledgment of N's legitimacy by the family, but from the admission of E that B L was a wife, and not a servant or concubine.*

Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of *Ranee Khujooroonissa* v. *Mussamut Roushun Jehan*, from the High Court of Judicature at Fort William in Bengal, delivered 18th May 1876.

Present.

SIR J. W. COLVILE.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THIS case, which fills a great mass of printed paper and has occupied much time, finally resolves itself into a few points not attended with any very great difficulty. In order to make those points intelligible a short history of the whole case appears to be necessary. Rajah Deedar Hossein died in 1841, possessed of half of the large zemindary of Soorjapore. He left five sons and five daughters. According to the contention of the one side he left five widows; according to the contention of the other side he left one wife and four concubines. Enayut Hossein, his eldest son, possessed himself of all the property of the deceased Rajah by virtue of two documents which he set up, and which will have to be referred to subsequently, one being a deed of gift as it is called, and the other a will, both dated the 18th November 1839, about two years before the death of the Rajah.

The first document purported to convey to Enayut one-third of the zemindary. The will may be shortly described as giving to Enayut Hossein a third of what remained, burdened with a trust of a somewhat indefinite character for pious uses, but with a bequest of the residue after those pious uses had been satisfied to the beneficial use of Enayut himself. Enayut was put into possession of the whole of the landed property, and it was directed that the other children were not to be enabled to sell or dispose of their shares in any way. Enayut was to pay them certain annuities, which he does not appear to have done, and it was only of the personal property that a division was directed in accordance with the Mahomedan law. By virtue of these documents Enayut took possession of the property of his father, and appears to have reduced the other members of the family to a state of poverty. He struggled for sometime to obtain mutation of names, in pursuance of these documents. The mutation was opposed by other members of the family, but was finally obtained in 1844 upon Enayut giving security. After that time some abortive suits were instituted by different members of the family *in formâ pauperis*; but the first proceeding necessary to notice at all at length, is a suit instituted by Khoobunissa, who was the widow of Nuzeeroodeen, the third son of Rajah Deedar Hossein, in 1852, as guardian and protector of her infant daughter Roushun Jehan (the present plaintiff), to set aside both the deed and the will, and to obtain possession on behalf of her daughter of a 14-annas share (the daughter's share) of the property of Nuzeeroodeen. She appears to have also brought a suit for the other 2-annas on her own behalf.

This suit came to be heard before Mr. Loch, who was the Judge at Purneah in 1855. His decision was to the effect that both the documents, the deed and the will, were in fact executed by the Rajah Deedar; that the deed was valid, but that the will was invalid because it had not obtained the consent of the heirs other than Enayut, which according to his view of

the will was necessary by the Mahomedan law. Enaynt Hossein appealed against that decision, and Khoobunissa would have had an undoubted right to her cross appeal but for what subsequently transpired. Pending this suit, which was decided in 1855, Enaynt Hossein had instituted a cross suit against Khoobunissa for the purpose of carrying into effect an alleged compromise to which he said she was a party, he alleging that she had received some 31,000 Rupees and had executed a document compromising the suit in his favour. This she denied. Issues were raised upon it, and this case came on for trial in August 1856, rather more than a year after the other decision. But on the 30th August of that year, a compromise, which in some respects may be undoubtedly called a real compromise, was come to. Khoobunissa then filed a document, in which she declared that she would not any longer contest the questions between her and Enaynt Hossein; that she had received certain money from him and agreed altogether to his terms, and in that document there was a statement that her daughter Roushun Jehan assented to this compromise. Roushun Jehan was also represented as a party to the transaction, and as asserting herself to be of age. That compromise was given effect to by Mr. Loch; it was also given effect to by the Sudr Dewanny Adawlut Court, which dismissed the appeal and gave a decree in the terms of it in December 1856.

Roushun Jehan, the present plaintiff, in 1859 married Synd Ahmed Reza, a member of the other branch of the family, who possessed the half of the pergunnah Soorjapore other than that which was held by Deedar Hossein; and in 1860 she filed a suit, in which she asserted that she was no party to and had no knowledge of the compromise between Enayut and her mother, and that it was effected by fraud and collusion on the part of both of them. She prayed that that compromise might be set aside, and she prayed in substance for a review of the judgment of Mr. Loch, so far as it was against her. She made also three further claims; the first to a share derived by her father from his brother Edoo Hossein, who had died before him; the second to a share in right of her grandmother, Bibee Loodhun, whom she alleged to have been a wife of Deedar Hossein. She thirdly claimed that there should be added to the whole zemindary property a portion which Enaynt Hossein had recovered by a decree of this Board against the Rezas, in respect of the right of his grandmother Ranee Sumree. It may be as well at once to dismiss this part of the case, by stating that it is not now denied on the part of Enayut that he recovered this sum, not in his own right, but as a trustee for all the other members of the family.

This suit appears to have been deplorably dealt with in the inferior Courts of India. It came first before Mr. Beaufort, who framed a certain number of issues, and proceeded as far as deciding the issues in bar. Then it came before Mr. Birch, who upset all that Mr. Beaufort had done, and dismissed the suit altogether in a summary manner, on the ground that the cause of action was not stated with sufficient precision. The High Court set this mistake right by remanding the cause to be retried; whereupon it came before Mr. Simson, who had succeeded Mr. Birch. Mr. Simson, who seems to have very imperfectly apprehended the nature of the suit, framed an issue, which by no means decided it, and after his trial (if it can be so called) of the case, it came before the High Court again, and was again remanded. This occurred in January or February 1864, when a very careful and luminous judgment was given by the Chief Justice Sir Barnes Peacock and another member of the Court, which it is now necessary more particularly to refer to. The High Court, after stating that the case had not been properly tried or even apprehended, remanded it for the following issues to be tried, in addition to the one laid down by Mr. Simson, which was as to the validity of the deed. "1. "Was the plaintiff of age according to the "Mahomedan law, independently of Regulation "XXVI of 1793, at the time when the alleged "compromise was effected? 2. Did the plain-"tiff execute the documents which purport to "have been executed by her, or any and which "of them? 3. If so, was she induced to exe-"cute the same by means of fraud or misre-"presentation? 4. Was the compromise a "fair one and beneficial to the plaintiff? 5. "Did the plaintiff receive any portion of the "money alleged to have been paid by the "defendant or any portion of the profits of the "putnee talook? 6. Did the plaintiff's mother "Khoobunissa receive the money? 7. Were "all or any and which of the receipts, alleged "by the defendant in his written statement to "have been executed by the plaintiff, executed "by her? 8. Was the decree in the Zillah "Court of Purneah of the 30th August 1856, "establishing the receipt for the 31,400 Rupees, "obtained by fraud or misrepresentation? 9. "Was the decree of the Sudr Court of the "10th December 1856, founded on the alleged "compromise, obtained by fraud or misrepre-"sentation? 10. If not, was it binding on "the plaintiff as carrying out an arrangement "beneficial to her, which her mother, as her "guardian, was competent to enter into?" The High Court proceed to say, "These are "the issues which we consider necessary for a "proper determination of the plaintiff's right "to set aside the decree of the Sudr Court. "It appears to us that this appeal is in the "nature of a bill for a review of judgment, and "therefore when the decree is set aside by "virtue of a regular suit, the same rights will "arise as if the Court upon review of judgment

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"had set aside its own decree." Then they go on to say: "The above issues will apply of "course to the plaintiff's claim only so far as "affects that portion of Deedar Hossein's pro-"perty which was the subject of the former "suit, but they do not apply to the shares "which belonged to her uncle and her grand-"mother, or to the share of the property "recovered by the defendant by the decree of "the Privy Council. These are wholly distinct "matters from that at issue before Mr. Loch, "and therefore as to them we think it proper to "lay down the following issues to be tried by "the Judge." Then come six more issues: "1. Did the father of the plaintiff survive her "uncle Edoo Hossein, and is the plaintiff "entitled to recover any and what portion of "the share, if any, of her uncle Edoo Hossein "of the estate of the plaintiff's late grand-"father Rajah Deedar Hossein? 2. Did Edoo "Hossein receive the allowance given by his "father's will, or assent to the will? 3. Did "the plaintiff's grandmother, Mussamut Bibee "Loodhun, *alias* Saemah, succeed to any and "what portion of the estate of Rajah Deedar "Hossein? 4. Did Bibee Loodhun take the "allowance as alleged in the defendant's "written statement? 5. Is the plaintiff en-"titled to recover any and what portion of "Bibee Loodhun's share, if any, of Rajah "Deedar Hossein's estate? 6. Is the plaintiff "entitled to recover any and what portion of "the one-anna eight-gundas share of the zemin-"dary of Soorjapore, recovered by the defend-"ant under decree of the Privy Council dated "the 11th July 1859?"

All the first ten issues which related to the validity of the compromise in the suit which was heard before Mr. Loch, and came before the Sudr Dewanny Adawlut, were decided by the Judge, Mr. Muspratt, before whom this case came on its remand, in favour of the Plaintiff. With respect to the latter issues, the learned Judge found against the plaintiff upon the question of Edoo Hossein surviving his brother Nuzeeroodeen, her father, and he found against her on the question of her right to succeed to any portion of the property of her grandmother Bibee Loodhun. The case came on appeal before the High Court, who gave a very elaborate judgment in January 1866. The High Court agree with the learned Judge of the Zillah Court in his finding on all the ten issues relating to the compromise, and there being two concurrent findings upon these issues, which are questions of fact, their Lordships are by no means disposed to disturb them. Indeed, it has scarcely been argued that, giving effect to the rule on this subject, they should be disturbed.

The High Court next came to the conclusion, that the compromise being set aside, owing to fraud and collusion on the part of Enayut Hossein, Enayut Hossein's right of appeal against Mr. Loch's judgment was not revived, whereas the right of appeal on the part of the plaintiff Roushun Jehan was revived. From that finding their Lordships differ. It appears to them that the effect of setting aside the compromise was to remit both parties to their original rights, and that if the plaintiff is to be allowed to be heard to appeal against so much of the decision of Mr. Loch as is against her, Enayut Hossein ought to be heard to appeal against so much of the decision as is against him. The High Court further affirm the decision of Mr. Loch on the subject of the will, which was in favour of the plaintiff, but they reverse his decision so far as it concerns the deed which was against her. Further they reverse the decision of Mr. Muspratt upon the two questions of the *right* of the plaintiff to succeed to Edoo Hossein, and of her right to succeed to her grandmother. The case, therefore, reduces itself to four questions, —first, the validity of the deed; secondly, the validity of the will; thirdly, the survivorship between Edoo and Nuzeeroodeen; and, fourthly, the plaintiff's right to succeed to her grandmother.

The policy of the Mahomedan law appears to be to prevent a testator interfering by will with the course of the devolution of property according to law among his heirs, although he may give a specified portion, as much as a third, to a stranger. But it also appears that a holder of property may, to a certain extent, defeat the policy of the law by giving in his lifetime the whole or any part of his property to one of his sons, provided he complies with certain forms. It is incumbent, however, upon those who seek to set up a proceeding of this sort, to show very clearly that the forms of the Mahomedan law, whereby its policy is defeated, have been complied with. There is no question of the execution by Rajah Deedar Hossein of this deed giving one-third to his son Enayut on the 10th November 1839. The deed was either—to use English expressions—a deed of gift simply, or a deed of gift for a consideration. If it was simply a deed of gift without consideration, it was invalid unless accompanied by a delivery of the thing given, as far as that thing is capable of delivery, or, in other words, by what is termed in the books a seisin on the part of the donee. In their Lordships' judgment there was no delivery of this kind. Even assuming that although the estate was under attachment, a sufficient seisin in it remained to the donor which he could impart to the donee, still it appears by the evidence of Mr. Perry, which is treated as trustworthy on both sides, that in point of fact Rajah Deedar Hossein remained in receipt of the rents and profits of the property until his death. Therefore if the deed were a mere deed of gift there was not that delivery of possession which was necessary to give it effect

by Mahomedan law. A question which was touched upon, though not much argued, viz., whether the doctrine of Mahomedan law relating to "confusion of gifts" applied, appears not to arise, as there was no delivery of possession.

But it was contended that this was a deed of gift for a consideration, and therefore that the delivery of possession was not necessary. But it was conceded that in order to make the deed valid in this view of the case, two conditions at all events must concur, viz., an actual payment of the consideration on the part of the donee, and a *boná fide* intention on the part of the donor to divest himself *in præsenti* of the property, and to confer it upon the donee. Undoubtedly, the adequacy of the consideration is not the question. A consideration may be perfectly valid which is wholly inadequate in amount when compared with the thing given. Some of the cases have gone so far as to say that even a gift of a ring may be a sufficient consideration; but whatever its amount it must be actually and *boná fide* paid.

Upon the subject of consideration there is the evidence of Mr. Perry, who was present at the time of the execution of the document, who says that the Rajah admitted that at some previous time he had received the consideration. There is the evidence of Enayut Hossein himself, who speaks to having paid the consideration, although he does not condescend to any particulars, and there is the evidence of one or two other witnesses, who speak of the consideration being given at the time of the execution, which appears scarcely reconcileable with the evidence of Mr. Perry. But the whole transaction must be looked to Mr. Perry speaks, as far as his knowledge is concerned, of the deed remaining in the possession of Rajah Deedar Hossein, although no doubt there is some evidence to the opposite effect. But it is certain that no proceeding was taken for obtaining mutation of names for more than twelve months after the execution of the deed. A petition was presented on the 16th March 1841, purporting to be on the part of the Rajah, and requesting a mutation of names, and there was another by Enayut on the 3rd May of that year. But, on the 19th June of that year, the Rajah Deedar presented a petition altogether repudiating the transaction, declaring that he had received no consideration money whatever, that it was not intended that any transfer should take place until after his death, and praying that the mutation of names should not be effected. On being questioned what his real wishes were, he still persisted in declaring his wish that Enayut should not be substituted for him in the books of the collectorate. It is true that on the 19th November 1841 a petition was laid before the Collector, purporting to come from Deedar Hossein, in which he set up the transaction, declaring that he had received the consideration money, and desiring that the name of his son should be entered, but that was several days after he was dead. He died on the 15th. The petition was dated on the 14th, received on the 19th, and the Collector very properly declined to act upon it. No evidence was given as to the state of the Rajah when he executed this petition, so shortly before his death, (if indeed he did execute it,) although Rajah Enayut Hossein and Heera Lall, the mokhtar who was concerned in it, either of whom could probably have given information on the subject, were not examined as witnesses in the cause.

Taking into consideration all these circumstances, their Lordships have come to the conclusion, that the transaction set up on behalf of the defendants was not a real one, that no real consideration passed, that there was no intention on the part of the Rajah to part with the property at once to his son, but that both father and son were endeavouring to evade the Mahomedan law, by representing that to be a present transfer of property which was intended only to operate after the father's death. Their Lordships therefore agree with the High Court in their view of the effect of the deed.

The next question arises as to the will. It was found as a fact by Mr. Loch that the heirs had not consented to this will; and with that finding their Lordships are satisfied. But it was argued by Mr. Cowie, first, that the will did not require confirmation; secondly, that at all events so much of it as gave one-third to Enayut Hossein for pious uses was not in contravention of Mahomedan law, and was therefore valid without confirmation. The effect of the will is, in the first place, to declare Enayut Hossein the executor and representative of Deedar, and to direct him to look after the zemindary, and so forth. Then follows this passage: "I divide the remaining two-thirds "now under my possession, uninterfered and "unconcerned by any one else, into three por- "tions. One portion to be laid out as the exe- "cutor may think proper for the testator's "welfare hereafter, by charity and pilgrimage, "and keep up the family usage, namely, the "expenses of the mosque and tazeeadaree of "the sacred martyrs, and for the comfort of "the travellers, the surplus amount to be ap- "propriated by himself the executor." Then it goes on to say, "from the other two-thirds "he shall keep everyone by his good conduct "and affection contented and satisfied. It is "also necessary for all persons having rights, "heirs, and friends connected with me to obey "the said executor and consider him my re- "presentative." Then further: "None of the "heirs have power to sell or divide the landed "property mentioned in the will." This will, in its general scope, appears to their Lordships to be in contravention of Mahomedan law. With respect to limited contention, that it may be supported with respect to the devise of the one-third share, it appears further to

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their Lordships that that devise, considering the vague character of it, and that the beneficial interest is left to Enayut Hossein after he has devoted what he may deem sufficient to certain indefinite pious uses, is in reality an attempt to give, under colour of a religious bequest, an interest in one-third to Enayut Hossein, in contravention of Mahomedan law.

The survivorship between Edoo and Nuzeeroodeen is a question made by no means clear on either side. Mr. Muspratt appears to have decided it almost, if not entirely, upon the ground that Enayut Hossein put in certain proceedings *in formâ pauperis*, the petition to sue and other documents, purporting to have been executed by Edoo in 1845. If he did then execute them, undoubtedly he had survived his brother, who died in January or February 1844. There appears to have been oral evidence on both sides; on the one side, that Edoo lived until 1845, on the other, that he died some time in 1843, a few months before his brother. The judgment of the High Court appears to be in effect that after a very careful consideration of these documents, after directing various searches for the originals, of which attested copies were produced, which searches proved fruitless, they have come to the conclusion that these documents are not genuine. Their Lordships do not feel that sufficient is laid before them to satisfy them that the High Court were wrong in that decision. These documents being rejected as fabricated, the Court say in substance that they credit the testimony of the plaintiff rather than that of the defendant, who had shown himself capable of fabricating documents, and that they do not in this question believe witnesses who on other parts of the case had not been believed.

Under these circumstances, whatever might have been their Lordships' view if the case had come before them as a tribunal of first instance, they do not think that sufficient ground has been shown for reversing the decision of the High Court.

There remains the question of the right of the plaintiff to succeed to Bibee Loodhun, and that depends upon whether Bibee Loodhun, was merely a concubine or a wife. It is an undisputed fact that Nuzeeroodeen, the son of Bibee Loodhun, was treated by his father and by all the members of the family as a legitimate son. It is not that he was on any particular occasions recognized by his father, but that he always appears to have been treated on the same footing as the other legitimate sons. This of itself appears to their Lordships to raise some presumption that his mother was his father's wife. That such a presumption arises under such circumstances appears to have been laid down in a case which has been referred to, *Khajah Hidayut Oollah v. Rai Jan Khanum*, in the 3rd Volume of Moore's Indian Appeals, p. 295, in which Dr. Lushington, who delivered the judgment of this Board, makes this observation (p. 318): "The effect of that appears to "be, that where a child has been born to a "father, of a mother where there has been not "a mere casual concubinage, but a more per- "manent connection, and where there is no "insurmountable obstacle to such a marriage, "then, according to the Mahomedan law, the "presumption is in favour of such marriage "having taken place." In this case there is no evidence that Bibee Loodhun was a woman of bad character, or that her connection was merely casual. She appears to have lived in the house at all events up to the death of the Rajah.

The same doctrine was laid down rather more strongly in a recent case, which came before this Board on the 20th March 1873. In the case of *Newab Mulka Jehan Sahiba v. Mahomed Ushkurree Khan*, a case from Oudh, and a Sheeah case, their Lordships say: "This treatment of "the daughter by the appellants"—that is to say, the treatment of the daughter as a member of the family,—"affords a strong presumption in "favour of the right of her mother to inherit "from her." The question there was whether the mother who was said to be a slave girl, inherited from her daughter, whom she survived, the same question which would have arisen in this case if Bibee Loodhun had survived her son Nuzeeroodeen. Their Lordships go on to say, after noticing various acts of acknowledgment of the legitimacy of the child:—"After these acknowledgments, Mulka Jehan "and the appellants who act with her ought "in their Lordships' view to have been pre- "pared with strong and conclusive evidence to "rebut the presumption raised by their own "acts and conduct; and in the absence of such "evidence, they think the presumption must "prevail."

It appears to their Lordships, therefore, that the undoubted acknowledgment by the father and by the whole family of the legitimacy of Nuzeeroodeen raises some presumption of the marriage of his mother. But it is said that that presumption is rebutted. The evidence chiefly relied upon for that purpose is the will of the Rajah, in which undoubtedly there is this expression: "For the maintenance of four "female servants monthly, 75; annually 900," and Bibee Loodhun does appear to have been one of those female servants there mentioned. At the same time, it is to be observed, this expression occurs only in the schedule; whereas in a part of the will preceding that schedule there is this expression: "The shares of the "executor and of the sons, daughters, and "wives of the testator and other claimants "from the estate fixed annually at," so and so; and the subsequent provision for the maintenance of every female servant appears to be an expansion of that paragraph in which they are spoken of as wives.

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But further, there is the undoubted acknowledgment by Enaynt Hossein himself of Bibee Loodhun being a wife, inasmuch as when Khyroonissa the principal wife brings a suit against him, Enayut Hossein objects, on the ground that Bibee Loodhun, one of the other wives, is not joined.

Under these circumstances it appears to their Lordships that there is evidence not only from the acknowledgment of Nuzeeroodeen's legitimacy by the family, but from the admission of Enayut Hossein, that Bibee Loodhun was a wife, and not merely a servant. It is indeed alleged that she was what is called a temporary wife, and among the Sheeah sect there appears to be a power of taking a mere temporary wife. But it is to be observed that there is no evidence of hers being what is called a temporary marriage, and indeed the witnesses who seek to impugn the marriage on the part of the defendant speak of Bibee Loodhun not as a temporary wife but as a mere servant. The question, therefore, seems to be not whether she was a temporary wife in the sense attached to that term in Mahomedan treatises, but whether she was a wife or whether she was a mere servant. On the whole their Lordships concur with the finding of the High Court. The evidence preponderates that she was a wife and not as a mere servant, though no doubt a wife of an inferior order.

A question further arose as to the amount of the share which the plaintiff would be entitled to, assuming that Bibee Loodhun was a wife, and it would certainly seem that her share would only be a fifth of an eighth, that is, a fortieth share; whereas she appears to have received something more by the decree of the Court. But it is to be observed that this in a great measure is a matter of detail, and possibly a clerical error or miscalculation, which might have been set right on an application to the High Court, and that in fact the High Court did invite applications for the purpose of remedying errors of this kind.

The result is, that with the exception of the slight variation of amount in the case of the claim of Mussamut Bibee Loodhun, their Lordships will humbly advise Her Majesty to affirm the decree of the High Court and to dismiss this appeal with costs.

CIRCULAR ORDER OF THE BOARD OF REVENUE.

No. XVII.

STANDING No. 385-3 and 4132.

ACCEPTANCE OF PRESENTS FROM NATIVE CHIEFS AND OTHERS BY GOVERNMENT SERVANTS.

Proceedings of the Board of Revenue, dated 9th November 1876, *No.* 2780.

G. O., 31st July 1876, No. 850, Public Department, communicated with Board's Proceedings, 31st August 1876, No. 2239.

THE following summary of the existing law and rules regarding the acceptance by Government servants of presents from Native Chiefs and others is circulated for information and guidance:—

(1). "The main provisions of the law on the subject are contained in 13, George III, Chapter 63, Sections 23-24; 33, George III, Chapter 52, Sections 62-63; 3 and 4 William IV, Chapter 85, Section 76.

(2). "The prohibition of the receipt of presents from Native Chiefs and others does not extend to the receipt of a few flowers or fruits and articles of inappreciable value, although even such trifling presents should be discouraged.

(3). "It does not extend to the exchange of presents between Governors, Lieutenant-Governors, Chief Commissioners, Agents to the Governor-General, or Political Officers generally in their ceremonial intercourse with Native Chiefs, on which occasions the presents from the Chiefs are deposited in the Government Toshakhana and return presents are given at Government expense.

(4). "It does not apply to presents to Medical Officers made *bonâ fide* for services rendered.

(5). "The general prohibition extends to all servants of Government, Native or European, Covenanted or Uncovenanted, in whatsoever Department they may be serving."

(6). "Where presents cannot be absolutely refused without giving offence, they must be delivered up to Government, and to this rule no exception whatsoever is permissible save with the express sanction of His Excellency the Governor-General in Council, which will only be given under very special circumstances."

2. The above rules are to be strictly observed, and no deviation therefrom is permitted, except with the previous sanction of the Government of India.

(True Extract.)

(Signed) H. E. STOKES,

Acting Secretary.

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OFFICIAL PAPER.

CONSOLIDATED CUSTOMS ACT.

Proceedings of the Madras Government, Revenue Department, 30th October 1876.

Read the following letter from the Honorable T. C. HOPE, Officiating Secretary to the Government of India, Department of Revenue Agriculture, and Commerce, (Custom), to, the Honorable W. HUDLESTON, Chief Secretary to the Government of Madras, dated Simla, 21st October 1876, No. 4:—

I AM directed to forward copies of the correspondence noted in the margin on the subject of the revision of the Consolidated Customs Act, and to state that the appointment of a Committee at Madras similar to that proposed for Calcutta would, in the opinion of His Excellency the Governor-General in Council, be very desirable.

From Government of Bengal, No. 774, of 23rd March 1876, with accompaniments.
To do. No. 8, dated 21st October 1876.

From H. J. REYNOLDS, Esq., Officiating Secretary to the Government of Bengal, to the Secretary to the Government of India, Department of Revenue, Agriculture, and Commerce, dated Calcutta, 17th March 1876, Miscellaneous Revenue, No. 774.

I am directed to submit, for the consideration and orders of His Excellency the Governor-General in Council, copies of the correspondence noted on the margin on the subject of appointing a Committee to consider and report on the modifications desirable in the Consolidated Customs Act VI of 1863, and to state that the Lieutenant-Governor supports the suggestion of the Chamber of Commerce and the recommendation of the Board of Revenue that a Committee should be appointed.

Letter from the Chamber of Commerce, dated 7th February 1876.
Letter from the Board of Revenue, No. 155-B., dated 3rd March 1876, reporting on the above.

2. His Honor thinks that a Committee consisting of two members would be sufficient. It would be his wish to place Mr. J. A. Crawford of the Civil Service, who is shortly expected from England, on the Committee, as his special experience of the subject is likely to be valuable, and to select the other gentlemen from the mercantile community.

From H. W. J. WOOD, Esq., Secretary, Bengal Chamber of Commerce, to the Secretary to the Government of Bengal, Revenue Department, dated Calcutta, 7th February 1876.

On the 29th January 1863 His Excellency the Governor-General in Council gave his assent to a Bill for consolidating and amending the laws relating to the administration of the Department of Sea Customs in India, and the provisions of the Act then passed as No. VI of 1863 have been in force since that date with the exception of one or two of the sections which have been repealed by later enactments.

2. Various causes, however, have, of late years, conspired to render many of the provisions of the Act inapplicable to present circumstances, but specially the altered condition of a large proportion of the carrying trade of the day, which has been effected by the Suez Canal route of communication with Europe; and the considerable steamer tonnage entering and clearing from British Indian ports renders it absolutely expedient that the Act be so modified as to meet the requirements of that class of vessels.

3. This subject was under discussion by the Chamber early in 1872, when several proposed amendments were submitted for the consideration of the Board of Revenue, but no steps appear to have been taken to give effect to the Chamber's recommendations; and I am instructed to bring the matter to the notice of His Honor the Lieutenant-Governor with the view to the appointment of a Committee to consider in what respects the Act is capable of modification, and to its being brought more in harmony with the existing state of trade.

No. 420.

Copy forwarded to the Officiating Secretary to the Board of Revenue, Miscellaneous Revenue Department, with the request that the Lieutenant-Governor may be favoured with an expression of the opinion of the Member in charge on the proposal made by the Chamber of Commerce.

(By order of the Lieut.-Governor of Bengal.)

(Signed) J. A. BOURDILLON,
Ag. Asst. Secy. to the Govt. of Bengal.

CALCUTTA, 15*th February* 1876.

From W. H. GRIMLEY, Esq., Officiating Secretary to the Board of Revenue, Lower Provinces, to the Secretary to the Government of Bengal, dated Fort William, 3rd March 1876, No. 155-B.

I am directed by the Member in charge to acknowledge the receipt of your endorsement, No. 420, dated 15th ultimo, requesting an expression of the Member in charge's opinion on a reference made by the Bengal Chamber of Commerce regarding the expediency of amending the Consolidated Customs Act VI of 1863, and in reply to state as follows:—

2. The Member in charge has for some time past considered that there were many points in the existing Act in which improvements were necessary, and nearly three years ago, in this office No. 304-C, dated 13th June 1872, he

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addressed Government on the subject and indicated some of the most important respects in which the Act required remodelling. He is convinced that, in carrying out the provisions of the Act, some unnecessary complexity has been introduced into the business of the Custom House, and that what is required is a more simplified procedure, and the adoptation of the Act to the conditions brought about by the Suez Canal route of communication.

3. Before suggesting any measures to Government, Mr. Money desired the Officiating Collector of Customs, Mr. T. B. Lane, who, both as Secretary to the Board for many years and also in his present capacity, has had considerable experience in Customs matters, to prepare a note embodying the chief points in which inconvenience is caused to the public by the enforcement of the provisions of Act VI of 1863. The Collector has now submitted a note, copy of which I am directed to forward for the consideration of His Honor the Lieutenant-Governor.

4. The note is a fair statement of the various difficulties which have arisen in the Customs work under the present Act. Without entering into details of each case or discussing the remedies suggested, Mr. Money is prepared to state that he agrees generally with the Collector in his exposition of the matter. The note, however, does not exhaust the subject. There are other questions of reform which it does not touch upon : one case may be instanced. Under the wording of Section 155 the Collector of Customs has no power to insist on a cash deposit or a mortgage or pledge of deeds, with the bond taken under that section, as the words "bond with sufficient security" have been held, under legal advice, to mean "a bond with sureties" and, nothing else, and no further security can be required until the law is altered.

5. The question of the revision of the conditions of the law (Sections 126 to 129) under which port-clearances are granted has been quite recently urged upon the notice of the Member in charge by a committee of delegates from the Chamber of Commerce. It was represented that much advantage would be gained if the agent of the ship could be allowed to file a correct manifest within a certain number of days—say three clear working days—after the clearance of the ship under some guarantee, a penalty enforceable in case of non-compliance. But as the law now stands, the manifest must be filed at the time of requesting a port-clearance, and though some license on the point has been allowed, no ship is permitted to get her clearance paper finally till the manifest has been filed.

6. A reference on this subject was made to the Customs authorities in Bombay and Madras, and from the answers received it appears that a similar difficulty has long been felt at both places. In practice, however, an attempt has been made to avoid the difficulty by allowing mail and certain other steamers to clear before putting in a manifest, a guarantee being taken from the ship's agent that the necessary papers will be put in afterwards. This is a measure of very doubtful legality, and in Bombay the guarantee letters are said to be quite useless, the promise they contain never being fulfilled owing to the absence of any legal enactment by which it could be enforced. The want of some remedy in the Act itself is evident.

7. Some of the inconveniences and defects of the Act have been removed or ameliorated by special orders and rules passed from time to time as necessity arose; it is now desirable that such orders and rules, in cases where their continuance is necessary, should receive the significant stamp of legislative enactment. On every consideration, therefore, the Member in charge is prepared to support the recommendation of the Chamber of Commerce regarding the expediency of appointing a committee to consider what amendment of the Act is required in order to adapt it to the existing state of commerce.

Since the present Customs Act VI of 1863 was passed, the circumstances of the trade of Calcutta have greatly changed in several important respects.

In 1862-63 all vessels with cargo from Europe came to Calcutta round the Cape, with the exception of the Peninsular and Oriental Steamers from Suez, to the number of twenty-four in the year. Out of a total number of 1,020 vessels arriving at Calcutta, 112 only were steamers; the other eight-ninths were sailing vessels.

In 1874-75, out of a total number of 1,319 arrivals at Calcutta, 640, or nearly one-half, were steamers, of which again 119 came by the Suez Canal.

In 1862-63 the value of the Calcutta trade in round numbers was in imports 16¼ millions, in exports 19½ millions, or a total of 35¾ millions.

In 1874-75, with imports valued at 25 millions, and exports at 28½ millions, the total value came to 53½ millions.

In 1862-63 all cargoes were discharged into boats by manual labour, and the unloading of a ship occupied from six weeks to two months.

In 1874-75, 142 vessels were discharged at the Port Commissioners' jetties, the average time so occupied by each vessel being five days, whilst the unloading of vessels in the stream was ordinarily completed in about twenty days.

Further, in 1862-63 no mails came by Bombay to Calcutta, and there was no telegraphic communication with England.

A brief consideration of these several change renders it easy to understand that a Customs Law, passed in 1863, may have proved very inapplicable to the Calcutta trade of 1875. As

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a fact, the Calcutta mercantile community has for some years past, from time to time, complained of the inconvenience and difficulties caused by the unavoidable enforcement of the provisions of Act VI.

In 1863 time was apparently no object. In 1875 every one is in a hurry—the ship-owner to get the greatest possible number of voyages from each of his vessels, the merchant to turn his money over as often as possible.

The almost unlimited use of the telegraph and the facilities afforded to traders by the banks of the present day have resulted in the greatest possible pressure on the loading of vessels in Great Britain and on their discharge and reloading here.

Turning to the Act, it will be seen that under the general head of Importation the present law requires the delivery, by the master of the vessel, of a manifest of each ship's cargo, first to the pilot after entering the Hooghly, and next at the Custom House when the vessel is there entered for the discharge of cargo. When the cargo is such as salt or coal, there is no difficulty about these manifests; but with a general or mixed cargo, it results, from the hurried loading in Great Britain, that the manifest delivered to the pilot is seldom correct, whilst an accurate manifest, or the bills of lading for preparing it in Calcutta, come by overland mail to the Agents direct.

In the beginning of 1874 this part of the law was so far relaxed by special Government orders as to allow discharge of cargo to begin, subject to delivery of the manifest by the master within twenty-four hours after the ship's arrival. This procedure does not, however, seem to me to meet the difficulty. First, the ship's agents should be allowed to deliver the manifest at the Custom House as soon as they have received it by mail (even if that be before the ship arrives); that is, the agents should be legally substituted for the master.

Next, the delivery of manifest to the pilot should be no longer required. Next, if by any mischance, such as an accident delaying the mails, the ship should arrive before the manifest could be given in, leave should be given, under all necessary precautions, to discharge the whole of the cargo without interruption if required in the interests of the ship, subject of course to any special conditions in the bills of lading. Jetty ships would thus deliver their cargo into the custody of the Port Commissioners, whilst ships in the stream would send their cargo to the Custom House.

In the event of the manifest reaching the agents and being filed at the Custom House before the ship's arrival, consignees could be allowed at once to apply for passes, and thus be ready to take delivery immediately on the ship's entry. Very great relief would be given by this change, and most specially so at every recurrence of the holidays which are now felt to be such a hindrance to the trade.

In the other case, however, of delay in the delivery of the manifest, and particularly where the ship would discharge in the stream, it would be obviously necessary to make certain restrictions in the interest of the consignees. On such an occasion the shipping interest would be in direct collision with them, and it would be absolutely necessary to limit the ship strictly to a scale of landing charges, not exceeding say the jetty rates, or some other reasonable scale, and to provide for the customary landing of certain classes of goods under out-passes, that is, without bringing them through the Custom House.

Such changes as these would allow of the removal of many of the restrictious imposed by the present Sections 33 to 61, and with due regard to the conflicting interests concerned, would be generally much appreciated.

The following Section 62, has been formed to work hardly in the case of goods of which the invoice has been mislaid or delayed. The necessary thorough examination of such goods for assessment is said often to injure them, and might be altogether avoided if the law was so altered as to allow of their being warehoused. Such permission could be unobjectionably given under certain rules providing for a sufficient cash deposit, pending assessment for duty and for the custody of the goods in the bonded warehouse. The last sentence in this section has also given rise to much discussion from time to time, and it is a question for consideration whether a revaluation of goods should not be allowed in cases where an error has been made by a customs officer. Obvious mistake are sometimes made, and either the chief officer of customs, or the chief customs authority, should have descretion to apply a remedy.

Sections 65 and 66 require to be made more clear in prescribing the mode of original assessment of damaged goods on their entry. The practice is to assess the goods as if they were undamaged, and this should be authorized. The actual duty paid is by Section 66 regulated on the price realised at auction.

Before going on to the sections headed "Warehousing," I would notice that amongst the "general provisions" of the Act, preceding the chapter on Importation, Section 26 should be so amended as to show what is meant by the 'real value' of goods, as also to enable the officer of customs to ascertain that value more nearly than he can now do by law. Section 27 also requires revision, as pointed out in a special correspondence last year. The Collector is now held bound to sell at once by public auction to the highest bidder, and the Government is laid open to some risk of loss. This section should be altered to agree with the corresponding section in the English law as explained in the correspondence referred to.

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On the other hand, larger discretion should be given to the Collector of Customs in allowing amendment of valuations. Under-valuation often happens from other causes than "accident:" or instance, from misunderstanding of rules or phrases, from the stupidity of petty clerks; but the Collector must in such cases by law take over the goods for Government. He has no other alternative, for any relaxation of the law must lay him open to frequent applications, with which he should not comply, or to charges of partiality and inconsistency.

In connection with the present Section 31, legal authority is required to enable the customs officer to relieve from payment of duty re-imported foreign goods which have already once paid duty of importation into India.

Sections 70 to 115 embrace the rules for warehousing goods before payment of duty. In these certain alterations would be necessary if the amendment suggested in Section 62 be made.

Improvement is also specially needed in Sections 77 and 78. Reading these with the form of bond annexed to the Act, it seems that default on the bonder's part could not be met save by a civil suit, and the Collector should properly be placed by law in a position to take summary proceedings (such as by application to a Magistrate for distraint of properties of the defaulter) for recovery of duty on bonded goods. In certain other parts of the Act, further, where parties give bonds under penalty, the Collector should be empowered to require such security, even in the shape of deposits if necessary, as would render realization an easy matter.

Section 92 should be assimilated to the English Act in providing for the bottling off of wines and spirits in the warehouse, and Section 102 should be altered so as to allow of a more prompt settlement of claims for rent on goods lodged in a public warehouse. There is no reason why bonders of salt should have ten days' grace for such payments, or that bills should be signed by the warehouse-keeper, for it may be more advantageous to collect such rents from the Custom House, and a demand from the Collector should be answered by immediate payment. Section 104 should also be amended so as to allow the Collector to detain a portion of bonded goods for rent due, as well as for duties or penalties. At present the law does not hinder a salt bonder from clearing out his stock before he has paid all rent due.

Sections 116 to 136 relate to exportation, and several changes are here required. The Tariff Act of August 1875 has reduced to three only the articles of export subject to duty, and the main object of Custom House rules for regulating the export trade may be now said to be the securing of correct statistics of the supplies of Indian produce to places outside India, and through what is called the interportal trade.

Seeing, as above said, that almost all this produce is now exported free of duty, the present law is decidedly defective. Shipping bills, for instance, must be given in for a pass, but the law nowhere provides that the details of quantity given in the shipping bills shall be correctly stated.

It is notorious that their present inaccuracy renders the statistics of *free* exports compiled from them untrustworthy. Section 132 has been found sufficient to secure correct details of dutiable exports and would be re-enacted, but a provision is absolutely wanted which will compel all shippers of free goods to give notice of re-lands and short-shipments.

The above-noticed defect is greatly aggravated by the present shape of Sections 126 to 129. These provide for the issue of the port clearance, and require much revision. In the first place, the Agent of the ship should be legally allowed to take the place of the master in applying for clearance. In the next place, the delivery of an export manifest should no longer be made a necessary preliminary to clearance.

The manifests filed under the present Act do not contain correct details of the cargo actually taken on board, and the shipping bills being also very incorrect, the statistics of exports, as I have already said, are not to be trusted.

It has been already proposed to amend Section 128 by allowing the agents of a ship to file a correct manifest, within three days *after* its departure, under proper guarantee and penalty, and some such change should now be made.

It may be added that this is all the more necessary owing to the rapidly-increasing use of the Port Commissioners' jetties for loading ships and the consequent haste with which they are pressed on to take their departure.

Section 135 might unobjectionably be so altered as to allow of the direct transhipment, under proper preventive supervision, of the cargo of a vessel returning to port after clearance.

The present wording implies that all such cargoes should be actually landed for re-export if transhipment is required.

Sections 137 to 148, relating to draw back, require minor alterations. Thus there is no apparent reason why drawback should not be allowed on ships' stores as it is under the English Act, especially seeing that, under Section 183, certain such stores may be shipped from a warehouse free of duty.

In the drawback provisions relating to officers of Her Majesty's Navy, spirits should also be

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specified as entitled to the allowance. A special Government order now permits this, and the law should be correctly worded.

Sections 149 to 160 relate entirely to the coasting trade, and amendments might be very usefully made here, with the important object of securing correct statistics, at the same time imposing as few restrictions as possible on the ships employed in the trade. It was found necessary in 1873 to pass a special set of rules for the Orissa ports, and the Commissioner of that Division would doubtless be able to suggest points on which the present law could be suitably altered.

Under the special heading "Spirits," Section 170 should be altered. Cordials when *imported* pay duty on their full liquid quantity, and there seems to be no reason who cordials manufactured in India should pay only on the quantity of spirit used in preparation.

Sections 174 and 175, for regulating the employment of agents to do business at the Custom House, might be very suitably re-arranged. They are misunderstood, and might be much simplified. Under the head of "Miscellaneous Provisions," Section 182 should be so extended as to allow of transhipment of marine stores when the co-proprietors of the ships concerned are in part identical, though not entirely so. Under Section 183 also transhipment of provisions and other such stores might, when desired, be allowed without requiring their prior formal warehousing and immediate re-export.

Section 184 should be made to include disputes as to proper rate of value in assessment of goods for which there are fixed tariff rates.

In regard to the last chapter, "Offences and Penalties," revision will doubtless be found necessary. Notably Section 216 should provide for the punishment for the *use* of any false document apart from the making and signing.

These notes attempt to deal with amendments in the present law which are obviously required.

Further discussion and consideration by persons representing the different interests affected would probably show that other matters which have not been noticed call for attention and fresh legislation.

(Signed) T. B. LANE.

28th February 1876.

From the Hon. T. C. HOPE, Officiating Secretary to the Government of India, Department of Revenue, Agriculture, and Commerce (Customs), to the Secretary to the Government of Bengal, dated Simla, 21st October 1876, No. 3.

In reply to your letter, No. 774, dated 23rd March 1876, I am directed to inform you that, as the Secretary of State for India has intimated that there is now no objection to proceeding with a revision of the consolidate Customs Act (VI of 1863), a consolidated Customs Bill will in a few days appear in the *Gazette of India*, which will be introduced into the Council of the Governor-General for making Laws and Regulations and referred to a Select Committee in the course of next month.

2. As, however, this Bill will be based upon suggestions which are in many cases of old standing, and it is most desirable that the new Act should meet all the reasonable requirements of existing conditions of trade, I am directed to add that the appointment by His Honor the Lieutenant-Governor of a Committee, as suggested in your letter, appears very desirable, provided their report can be submitted by the 1st of January next.

Order thereon, 30th October 1876, No. 1,527.

A Committee will be formed accordingly.

2. The Collector of Sea Customs will preside. The Master Attendant will join the Committee, and the Chamber of Commerce and the Trades Association will be invited to nominate, each a Member.

3. Two native merchants of intelligence and position, one of whom might be an owner of coasting vessels, should be requested to take part in the proceedings.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Secretary to Government.

MISCELLANEOUS.

THE FAMINE TRACT.

(From our Commissioner.)

SHOLAPOOR, *November* 9.

The railway train landed me here at half-past four this morning; and after seeing the Collector and several Europeans and Natives likely to give me information, I visited eight places where famine operations of some kind are going on in Sholapoor, or within three miles of the city. One important relief work, the Ahirwadi road, at a distance of four miles, I was obliged to leave for to-morrow, owing to the impossibility apparently of getting a second horse. The price of fodder is so high, that some owners of public carriages and horses

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parted with their property, and the remainder get more employment than they can easily bear. The cost of public conveyances is about twice the usual rate, and in case of labour, costs four times as much as is the custom in ordinary seasons. I also resorted to a means of information to which, though it is not literally reliable, I am disposed to attach much value. This was holding conversation with several parties of the common people, numbering in all about thirty persons, who included labourers, bazaar men, and starving strangers from the outlying talukas. I found these men wonderfully reasonable in all they said about their circumstances, and quite awed at the gigantic scale on which the *Sircar* is carrying on operations for their relief. I will mention one instance of their intelligence and knowledge, which particularly struck me. The day before yesterday a sensational telegram was published in one of the Bombay papers to show that the final dire result of famine had begun in Sholapoor. Twenty-five persons had died of starvation! The idea of starvation in a town on the railway, and with grain pouring in morning, noon, and night, was so improbable, that I was not in the least surprised to learn this morning, before I had been here three hours, that the deaths had occurred on one of the relief works, where, of course, food is secured to the people whatever may be the state of the bazaar and city. I asked two different parties of Natives, one Mussulman and one Hindoo, about the affair, and they unhesitatingly ascribed the deaths to unavoidable natural causes. It seemed not to have once entered their minds that *want of food* could have been the cause. The account these people gave of the occurrence was, that the labourers on the relief work had eaten a full meal of parched grain (*phootana*) and drank water after it: the water caused the *phootana* to swell enormously, as *phootana* always does if soaked, and violent purging and vomiting had been the result, fatal to twenty-five persons. In their simplicity some of them added, by way of explanation, that a morsel of bread taken before the *phootana* prevents any injurious consequences. Mr. J. H. Grant, the Collector, gave me the same explanation: only he added that exhaustion from hard work of a kind the people were not accustomed to, together with exposure out on the relief works, had made the people liable to diseases from slight causes; and that those who had suffered most had been persons who were weak through ill-feeding before they went on the works. Let me suggest that not impossibly the *phootana* may have been of inferior quality.

Now I come to one of the most delicate points I have to report upon. I was told by several intelligent men of the labouring class, that many people on the works had been going for twenty-four and forty-eight hours without food, and that these were the persons who had died, upon suddenly taking a full meal of *phootana*. The rule upon the Collector's relief works is, that the people be paid at the close of each day's work: the men getting two annas, and the women and children less, as in Poona. On the works of the Department of the Public Works, where large bodies of men are always permanently employed, new hands taken on from among the destitute population have to be content to be paid at stated times like the permanent work-people; and I believe that during the present scarcity those times are once a week. But on the famine relief works, specially started for starving people, payment is ordered to be made daily. Now it is always difficult to make sure that orders are carried out by subordinates; but it is doubly so in the present hurry and pressure. So what these men told me was, that people were *not* all paid every day. They said that work was stopped at 4 o'clock each afternoon, and that then the "Brahmans," by which they meant the clerks or overseers, began to deal out the wages. This was done, they said, by a somewhat tedious process with several books, the coolies being called up in files or gangs of one hundred each, and having to answer to their names. Darkness came on before all the gangs had been paid, and the remainder were told they would get two days' pay at once next afternoon, which of course meant they would have nothing to eat all that time. This was represented to me as going on from day to day, and was ascribed purely to the dilatoriness of the "Brahmans," without a word of reflection upon the *Circar* or any of its European embodiments. The statement may, of course, be denied by the authorities *in theory* but my conviction is that it is true. It is, in the first place, the most likely thing that should occur, knowing, as everybody does, how work is scamped and neglected every day and everywhere, even when the chief authority has nothing else to do than to look after it. Then, I cannot conceive it possible that a clear and circumstantial story like that was told me could be without foundation. My informant, although a labouring man, spoke with uncommon intelligence. He was careful even to explain to me, that starvation followed as well as preceded the payment of several days' wages at once. For, as he said the quantity of grain to be obtained for two annas is so small, that when the poor people got four, six, or eight annas into their hands at once, they give it all for a good meal at the time, and then they have nothing to eat till they get their next payment.

I must ascertain whether the files are called up in the same order every day, so that the same persons, *viz.*, those whose turns come last, are put off on successive days.

This man and several who were standing round him further told me that a *loot* had taken

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place at a certain spot where a stream crosses the road, on which the people are employed. A quantity of grain was passing, and although it was called salt, the work-people, who had been without pay or food for a day or two, rushed upon the carts and helped themselves. The Collector made an inquiry, but after hearing the circumstances, warned the men and let them off. I have mentioned all my authority for this story, but I will seek confirmation of it on the spot when I go there to-morrow.

Besides, I am told by a private European gentleman and his family that last Sunday hundreds of people came in from the works at one place where they are temporarily stopped, as I shall explain presently, and that they were complaining, that three and four days' pay was due to them, and that they had had nothing to eat; they expected to be paid at the Collector's office where they were going. It seems to me that this evidence cannot be got over. At the same time, we may easily imagine that when a gigantic work is started all at once, many defects appear in the arrangements and are corrected as experience is gained. In the case in question the work-people used at first to come into Sholapoor to buy their food: then some dealers took out quantities of grain, and opened shops on the spot: and now grain is being carried to the people by Government, to pay them with, instead of money, I suppose. This I learned, not from an official source, but only from some Natives who had been at the works. I have more to tell.

All that I have written here refers to the Ahirwadi road, which is being built as a famine relief work. Ahirwadi is a large town twelve miles from Sholapoor, and the Government has sanctioned a proper road to be made to it as a relief work, in place of the cart-track, which is the only means of communication at present. This road was under construction along its whole length, and was giving employment to 2,500 people when the outbreak of disease occurred to which I have alluded. I might have mentioned earlier that Mr. Grant calls the disease choleraic diarrhœa, and he told me plainly that not twenty-five but fifty deaths had resulted from it. The disease broke out along the last eight miles of the road, beginning, and appearing in its worst form, at Kumta, four miles from here; and as it looked like an epidemic, the work was promptly stopped between the Kumta and Ahirwadi, and the larger half of the 2,500 people distributed as fast as they could be over other relief works in and near the city of Sholapoor. Some of these were the people who streamed in on Sunday last and said they wanted several days' pay. A good many of these disengaged people are not yet provided with work, and are therefore without pay and food. Whose fault this is I cannot say without incurring grave responsibility. I saw to-day over fifty of them, sitting by the road-side close to the city wall, and looking unmistakeably hungry—*very* hungry. They told me that they were part of two files (two hundred people) who had been sent away from the Ahirwadi road, and had nothing to do and nothing to eat. The remainder of their number, they said, were scattered about like themselves, anywhere. They said they had been ordered to work at a certain trench close at hand by a Maccudum in charge of the work, but, that a "Brahman" who was over the Muccudum had said there was no work for them there. Later on I was at the trench, and asked a man who looked like a peon why those two hundred people were out of work. His answer was laconic. "Can all Sholapoor be employed at this trench?" On the other side of the question, let me mention that, as I hear, both the Collector and the Executive Engineer have more work on hand than they can find labour for, and that crowds of starving people refuse work which is not to their taste on any trifling pretext. I have questioned two or three solitary coolies, who were loitering about in expectation of charity, on this point, and have got substantially the answer that used to be so commonly heard from European loafers before the Vagrancy Act was passed. "The *Sircar* is my father and mother: I have eaten nothing for three days: whatever I am ordered, I will do; let the *Sircar* fill my belly, and God will give the reward." I shall take an opportunity to-morrow to see a body of men refuse work, and then endeavour to learn the exact state of the case.

Mr. Grant is unquestionably as energetic, sympathizing, and popular a Collector as it would be easy to find in a great many districts. He was acting for Mr. Rasanquet when the scarcity began, and it is now decided that he will continue till there is a change for the better. I have heard two distinct opinions in his favour among the Natives: they like him personally, and they have confidence that he is not over much in the hands of the "Brahmans." The Europeans also are glad that Mr. Grant's energy is to grapple with the present emergency. The power of giving orders fully, promptly, and accurately, is perhaps the highest administrative faculty in an emergency, and I dare say Mr. Grant comes up to all it is possible to desire. But look at the leading facts which I have forcibly before my mind just now, and let any one who can, say what might be done.

1. Some scores of people are at this moment starving in Sholapoor, and as starvation does not wait, a few of the weakest must die every twenty-four hours.

2. The people of India are so patient and enduring, that they will frequently sink into exhausion from hunger rather than put themselves about beyond a certain extent.

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3. Nothing short of genius could do more than is being done to meet the case.

I would lay stress upon the last statement; for while harrowing spectacles of want are met with in all directions, efforts are being put forth to save life which are almost stupendous. There are some twenty relief works in progress over the Collectorate, and 40,000 people are employed on them. These multitudes have to be paid, and perhaps both paid and fed, through agents and sub-agents, who are energitic and conscientious, or the reverse, just as it may happen. The Collector puts his own shoulder to the big wheel, and holds the strings of all the other; and if the result is short of the possible, all Sholapoor will testify that it is far above the natural or usual. During the few hours I have been here I have heard several totally independent persons giving it as the expression of the community that the fact of a man of Mr. Grant's energy being in charge of one of the very worst districts where the famine prevails, is one for which we cannot be too thankful. At the same time it is not in British flesh and blood to be quiet while life is being lost through want of food, and a stir will continue to be made as long as the impossible is not achieved. Sholapoor is full of grain, and nothing is left undone that money and energy can do to convey it to the mouths of the needy. Under these circumstances it is hard that the Collector, who must be already distracted with more matters than he can possibly attend to, should have to waste time in contradicting exaggerated reports and correcting false impressions. For I notice that some people believe whatever they hear, and continue to believe till they are told that "the Collector says," or "Mr. Grant says" something different. A single hour in Sholapoor is enough to make any one wonder that deaths from starvation are not the order of the day: yet so hearty are the exertions with which the distress is met, that no death has occurred, nor is likely to occur, except from circumstances which are simply beyond control. I have already given one cause of a very few cases of starvation which might doubtless be prevented if a Napoleon were in Mr. Grant's place; but occasional cases occur, chiefly of children, among people who come in from the outlying talukas so famished that they are past recovery, even although they go straight to the dispensary or the Collector's *bungalow*. It may be asked why they were not put upon relief works in their own talukas. Well it need not be denied that the news of the relief works has possibly not reached every inhabitant of every village in all the Collectorate. But in most cases the people leave their villages and towns in hope of saving their cattle, and starvation overtakes them before they get out of the drought-stricken region. Some also prefer to wander about in search of food as long as they can hold out. We must remember that hunger does not make the average Hindoos wild as it does Europeans. They sink very quietly, and are at the point of death while they are still feebly grumbling. This combination of physical weakness with an indolent temperament, makes them leave work behind and wander forth in the direction of the Nizam's territories, where the monsoon has not failed as it has in the Deccan and Southern Mahratta country. They have no definite idea how far they have to go, nor whether they can find support for themselves all the way; and thus they drop off along the route, and some find their last resting place in Sholapoor. Infants are of necessity the first to perish in this way. Numbers of families may be seen passing through every day, driving their cattle, if they have any, before them, and carrying their household effects. They are all in a sad state of emaciation, with long skinny limbs and hollow faces. On my way to the Ekrooka lake to-day I took especial notice of an aged couple, bent and grey-headed, who were nearing Sholapoor; the husband had thoughtfully filled a large vessel with water at the canal outside the city, and the wife was tottering along with the few things they possessed in a large brown sack on her back. It was quite distressing to see these old people who had so little of their course in this world left to run, forsaking their home and going they scarcely knew where. Deaths that occur in this way it is obviously impossible to prevent. At present they are occurring in no other way. It is absolutely wrong to speak

without qualification of "starvation" in Sholapoor. The accumulating pressure of the relief operations, the obstinate stupidity of the people, and the want of a few of Pharoah's taskmasters over the "Brahmans,"—these causes result in a few deaths where 40,000 people are employed on relief works and thousands of rupees are being spent in charity. What is really to be trembled for is the outlook.

November 9.

Government has, I understand, nearly matured a plan for saving such of the cattle as are now left alive: but what will become of the people? I do not see that more can be done than is being done now; but the present measures will be inadequate, two, three, and six months hence. Not only is the khurreef crop lost, but there will be no rubbee; and when the fodder is all cut, this small source of income to the people will be gone. Fortunately the supply of water in this taluka will not fail, but in many places elesewhere, every tank and stream will soon be dry.

I have collected a mass of interesting miscellaneous information to-day; but although I have been writing against time, I cannot put more on paper now. It seemed most important to settle the sensational subject of "deaths from starvation" before mentioning anything else. I should say that the telegram that told of the "twenty-five deaths from starvation" found its climax in two deaths *in the Collector's compound*. These deaths occurred on the 14th and 20th of August last, and had little more to do with the present distress than a death which occurred some years ago in my own compound.

I have been disappointed to find that through some inadvertence none of the Calcutta papers is on the list registered for special rates at the Railway Telegraph Office here. There is no Government telegraph in Sholapoor. An office was started some time ago, after the railway with its telegraph was opened; but as it did not pay, it was closed again.

November 10.

I went out to Kumta to-day, but did not see what I expected, as the road has been carried out to Satkher two or three miles further on. However, I questioned one of the villagers about the people refusing work, and what he said to me in the course of a rambling conversation, has convinced me that the following is a true statement of the fact. People who are put to work on a road are obliged to go further and further from Sholapoor, as the work progresses: grain is a little dearer in the villages, than it is in the bazaar: the pittance the work-people are paid, especially when children are refused to be taken on, and have to be supported by their parents, affords them very slender support. As I have already said, the disposition of the people is almost to die quietly, in preference to taking much trouble for life. Under these circumstances many do, I am now convinced, decline work on the roads, and choose to risk starvation by hanging about Sholapoor. I also asked the man if the people were paid daily, and he said at once that they were paid every two or three days. It did not seem to occur to him, that there was any objection in that being so.

Next to the lives of the people, the lives of the cattle demand attention. For, not to speak of the loss of the animals as mere property, if the cattle die, the people will not have the means to plough their fields next year. It appears quite plain to me, that the Government as yet shown no sign that it recognizes the gravity of the situation in this respect. The monsoon rainfall in Sholapoor this year was under nine inches, instead of being between twenty-five and thirty. Whether this refers to the Sholapoor taluka, or whether it means the average of all the seven talukas of the Collectorate, I do not know; but the presence of two tanks and a canal in the neighbourhood of the city, has kept the country about Sholapoor itself more green than it is in some of the out lying talukas. But both in Sholapoor and outside of it the withering up of what forage had sprung up, and the exhaustion of most of the supplies of water, caused the cattle to die off some weeks before the people were very severely affected. And, indeed, thousands of people left their houses and encountered starvation who

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might have been provided for on the relief works, simply in hope of finding pasture for their cattle. Nothing is further from my thoughts than the idea that I can teach the Government what to do. Measures that always seem short and easy to people who know nothing about the case, are beset with complications to those who have to carry them out. But a child can see that if animals are not cared for when their food fails, they will soon cease to give any concern. Now cattle have been dying in most parts of the Collectorate for the last six weeks: no tally has been kept of the number, but thousands are known to have died. It is several weeks since the owners began to part with them—cows as well as bullocks for two Rupees each. For at least the past week, the price has been two and four annas, the purchasers being butchers, who took them, not for any beef that could be got off their bones, but only to slaughter them for their skins, which are said to be worth two Rupees. This wholesale slaughter of cattle, and, especially of their household cattle, is very distressing to the people; and great numbers of them have foregone the temptation of the two annas and have deserted their cattle: hundreds are, I may now say, daily so deserted here in Sholapoor. So, whatever it may ultimately be decided to do is becoming less necessary every day. Already the animals available for work next year, are short by thousands of the number required: possibly half are already gone, and the balance is rapidly becoming smaller. But nothing can shorten the natural period for hatching a Resolution in the Secretariat. I do not know whether the hesitation is about the sum of money that may be spent, or about the measures for spending it. Something great must be approaching birth; for the Collector was summoned from his post to Poona, notwithstanding the need of his presence here; and I am credibly informed that it was to share in the incubation which no doubt is unremitted. I have heard of two schemes that have been suggested to save the cattle: the one now developing in the Secretariat is to send droves of them to the slopes of the Western *Ghats*, especially about Khandalla: the other, which has been suggested by Captain Coussmaker, of the Photozincographic Office at Poona, in a letter to the *Times of India*, is to confine the animals in enclosures on the banks of the nearest streams, and to feed them with pressed hay and kirbee taken by rail from Bombay. Captain Coussmaker thinks this plan would not be more costly than the other, considering that the cattle must be artificially fed on their way to the *ghats*, and that it would be greatly better for the stock. I have ascertained from a private source that they can be pressed in Bombay at one rupee and a half per bale of 300lbs. In the meantime others have come forward viviparously with plans. Foremost among these are Mr. Morarjee Goculdass, well-known in Bombay, and Mr. Veerchund Deepchund, is partner in a great cotton mill which is now nearly complete in Sholapoor. These gentlemen had up to yesterday, bought or taken for nothing 2,700 head of cattle, and sent them in herds towards Poona, in charge of drovers on eight rupees a month. Arrangements are made to supply food along the road from Poona or Bombay; and I believe it it has been necessary to make provision for water at certain points. The destination of these animals is Bimdee, a place near Callian. That will involve taking them right across the *ghats*; but as the Bombay Pinjrapole, of which Mr. Veerchund is Secretary, has a branch at Bimdee, arrangements for taking charge of the cattle can easily be made there. Mr. Morarjee has tried, by several applications to Mr. Grant, and by an interview with the Governor at Poona, to force "the birth" at the Secretariat. He offers to hand over the animals to Government at Poona, to do what it likes with; but the Government fears a still-born Resolution, and will have nothing to say to premature measures. Whether Mr. Morarjee's offer be accepted or not, the Bhattia partners are not likely to be losers by this benevolent action; for as there is practically no limit to the number of cattle that fall into their hands *gratis*, they will in any case have some thousands to themselves, which, after being put into condition at Bimdee, will be worth from fifteen to thirty rupees a head.—*The Indian Agriculturist*, Vol. I, p. 334.

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ACT OF THE GOVERNMENT OF MADRAS.

The following Act of the Governor of Fort St. George in Council received the assent of the Governor-General on the 3rd March 1876, and took effect on the 1st September 1876.

Act No. I of 1876.

An Act to make better provision for the separate assessment of alienated portions of Permanently Settled Estates.

Preamble.

Whereas it is desirable to make better provision for the separate assessment to land revenue of portions of premanently settled estates alienated by sale or otherwise; It is hereby enacted as follows:—

Application for registry and separate assessment.

1. The alienor or alienee of any portion of a permanently settled estate, or the representative of any such alienor or alienee, may apply to the Collector of the district in which such portion is situate for its registration in the name of the alienee and for its separate assessment in respect of land revenue.

Collector to inquire who is the owner of the property.

2. The Collector shall thereupon hold an inquiry as to who is the present owner of the property in respect of which the application is made.

Procedure as to inquiry.

For the purposes of such inquiry the Collector shall publish a notice in the local Gazette, in three successive issues, that the application has been made, and that unless cause is shown to the contrary within sixty days from the date of notice such separate assessment will be made. He shall also cause notice of the inquiry to be given to any alienor or alienee who has not joined in the application.

In what case registry and separate assessment should be made.

If on such inquiry it appears that the alienation has taken place and that all the parties to such alienation concur in applying for the separate assessment of the portion alienated, and if objection is not taken by any person interested in the estate, or being, taken, is disallowed by the Collector, the Collector shall proceed to register the alienated portion in the name of the alienee and to apportion the assessment of such alienated portion in the manner provided in Section 45 of Madras Act II of 1864, subject to the sanction laid down in Section 46 of that Act.

Proportion of land revenue to be deducted.

3. Upon such assessment being declared, there shall be deducted from the land revenue payable in respect of such estate an amount equal to the sum assessed on the portion so separately assessed.

Assessed part not liable for arrears of revenue due by the estates, nor estate liable for arrears due by part assessed.

4. Upon such assessment being made, the portion so assessed shall no longer be liable in respect of arrears of revenue due by the estate of which it formed a part; nor shall such estate be liable in respect of the portion so assessed.

Persons aggrieved by reason of registration may sue in Civil Court.

5. Any person aggrieved by the fact of the separate registration of such portion may sue in a Civil Court for a decree declaring that such separate registration ought not to be made.

Persons aggrieved by Collector's refusal to register may sue in Civil Court.

6. Any person aggrieved by the Collector's refusal to register may sue in a Civil Court for a decree declaring that such separate registration ought to be made.

Persons aggrieved by reason of assessment may appeal to Revenue Board.

7. Any person aggrieved by the apportionment of the assessment under Section 2 of this Act may appeal to the Board of Revenue within ninety days from the date of the declaration of such assessment; and the order of the Board of Revenue shall be final.

Governor in Council may re-adjust the assessment in case of fraud, &c., in its apportionment.

8. The Governor in Council may at any time, if it appears that there has been fraud or material error in the apportionment of such separate assessment, cause the same to be re-adjusted.

Regulation I of 1819, repealed.

9. Regulation I of 1819 is hereby repealed.

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